Dr. Yusuf Salah Mohamud

Understanding Islamic Banking Transactions:

A Scientific and Practical Approach

مرايا للطباعة والنشر والتوزيع

Understanding Islamic Banking Transactions:

A Scientific and Practical Approach

Dr. Yusuf Salah Mohamud

Title: Understanding Islamic Banking Transactions: A Scientific and Practical Approach

Author: Dr. Yusuf Salah Mohamud

Publisher: Maraya Printing, Publishing & Distribution LLC

ISBN: 978-0-5678-57152

First edition, 2026

MARAYA | مرايـــا
للطباعة والنشر والتوزيـع ذ.م.م
PRINTING PUBLISHING & DISTRIBUTION LLC

Maraya Publishing and Distribution – Dubai – P.O.Box: 14686 MARAYABOOKS@HOTMAIL.COM

All rights reserved. No part of this book may be reproduced, stored in a retrieval system, or transmitted in any form or by any means — electronic, mechanical, photocopying, recording, or otherwise — without prior written permission of the publisher.

The views and opinions expressed in this book are solely those of the author and do not necessarily represent the views or positions of the publisher. The publisher bears no responsibility for the content of the material or for any interpretations, consequences, or results arising from its publication.

Allah Almighty said:

"O you who have believed, when you enter into a tadāyun — a transaction of mutual debt — and one of the debts is deferred to a fixed term, then put it in writing. And let a scribe write for the parties in justice." (al-Baqarah: 282)

Foreword

I was pleased to review the book authored by Dr. Yusuf Salah, entitled *"Understanding Islamic Banking Transactions: A Scientific and Practical Approach."* I found in this work — by the grace of Allah — what every researcher in the field of contemporary banking, particularly Islamic banking, earnestly seeks.

This study examines the core issues of Islamic banking, shedding light on financial transactions in a manner that is both scholarly and accessible to a wide audience. The author is to be commended for his ability to pave the way for a stronger and more coherent economy by establishing a solid foundation and by reducing, as far as possible, disputes surrounding financial transactions.

Dr. Yusuf Salah addresses fundamental topics in Islamic banking with depth and precision, including:

- The jurisprudence of debt (*Āyat al-Mudāyanah*),
- The jurisprudence of exchange contracts (*Muʿāwaḍāt*),
- The jurisprudence of gifts (*Hiba*),
- The role of *Wakālah* (agency) in facilitating guarantees and transfers,
- The jurisprudence of usufructs (*Manāfiʿ*),
- The jurisprudence of partnerships (*Mushārakāt*),
- The jurisprudence of usury (*Ribā*), and
- The rulings on Zakāt related to debt.

The author approaches these themes with rigorous research and careful study, employing a sound scientific methodology. As a result, he has been able to determine the most preferable opinions on controversial issues, while presenting financial realities in the light of Shariʿa principles. This work is distinguished for its analytical strength and its contribution to clarifying the operational framework of Islamic banking.

I hope — God willing — that this study will contribute both originality and practical benefit to the advancement of Islamic banking. Its reliance on

scientific methodology in resolving disputed matters makes it an indispensable resource for every scholar and practitioner in this field.

In conclusion, I ask Allah Almighty to grant the author success in continuing his contributions to this vital discipline. The economic library needs such works to demonstrate that Islam offers an understanding and logic fully compatible with the highest stages of human civilization.

I also pray that Allah Almighty guide the author to what He loves and is pleased with, and that He accept good deeds from him, from us, and from all His servants. I close with the words of the Qur'an: *"I only intend reform as much as I am able. And my success is not but through Allah. Upon Him I have relied, and to Him I return."* (Hud 11:88)

By:
Prof. Dr. Sayed Attia Abdel-Wahid
Professor at the Faculty of Law, Ain Shams University,
Member of the International Commission on Scientific Miracles in the Quran and Sunnah,

And Chair of the Humanities and Social Sciences Committee at the International Center for Research on the Scientific Miracles in the Quran and Sunnah

Introduction

The introduction is structured into four main elements:

1. The Preamble
2. The Purpose and Importance of the Book
3. The Methodology
4. The Overall Structure of the Book

1. Preamble

Command to Seek Knowledge: Allah commands humanity to pursue knowledge: *"And say, 'My Lord, increase me in knowledge.'"* (Ta-Ha 20:114) This divine directive highlights the importance of continuous intellectual growth, particularly in fields such as banking and financial transactions, which have become increasingly diverse and complex. A deep understanding of these matters is essential not only for individuals and communities but also for **standards-setting bodies, codifiers, financial institutions, fiqh academies, Sharīʿa supervisory boards, judicial authorities, lawyers, and arbitration centers.**

Comprehensive Guidance of Sharīʿa: Allah has not left humanity to confusion. He sent messengers to guide mankind and revealed a holistic framework addressing every aspect of life: *"And We have sent down to you the Book as clarification for all things."* (Al-Nahl 16:89)

In the realm of financial matters, numerous Qur'anic verses and Prophetic traditions offer guidance. A key example is:

"O you who have believed, when you enter into a tadāyun — a transaction of mutual debt — and one of the debts is deferred to a fixed term, then put it in writing." (Al-Baqarah 2:282)

This verse, which is central to this book, addresses most of the contentious issues in financial transactions. When analyzed through **accounting principles and mathematical reasoning**, it reveals an aspect of what may be described

as the Qur'an's **scientific precision**. Allah says: *"We will show them Our signs in the horizons and within themselves until it becomes clear to them that it is the truth."* (Fussilat 41:53). Notably, Sharīʿa texts related to financial transactions are interconnected, much like a spider's web — a finely structured and coherent system that requires deep understanding.

Clarity and Sound Judgment in Transactions: The Prophet ﷺ said: *"What is lawful is clear, and what is unlawful is clear."* (Muslim: 1599)

This underscores the importance of transparency in financial transactions — distinguishing between what is lawful (good) and what is unlawful (bad). Allah says: *"They ask you what has been made lawful for them. Say, 'Lawful for you are good things.'"* (Al-Ma'idah 5:4)

Good things (ṭayyibāt) are often discerned through **reasoned judgment and experience**, requiring **thoughtful effort** to determine what is beneficial (*ṭayyib*) and what is harmful (*khabīth*).

Understanding Differences of Opinion: Sharīʿa scholars have long acknowledged that differences of opinion stem from variations in individual understanding.

The Prophet ﷺ said, *"Perhaps the one it is conveyed to will understand it better than the one who heard it."* (Bukhari: 1741)

These texts confirm that **multiple scholarly opinions** on a single issue do not negate the presence of **a correct view among them**. Allah Almighty said: *"And We gave understanding of the case to Solomon."* (Al-Anbiya' 21:79)

The Central Challenge: The primary challenge is identifying the correct opinion — a task comparable to extracting gold from surrounding ore. This requires:

- **Interdisciplinary analysis** to reveal underlying realities;
- **Integration of various sciences** to uncover essential principles; and
- **Application of sound conclusions to contemporary contexts.**

Harmony of Revelation and Sound Knowledge: There is no contradiction between Sharīʿa texts and verified empirical knowledge, nor between revelation and reason. All fields of knowledge are interconnected, forming a broad framework in which disciplines such as social science, financial transactions, and mathematics build upon one another, enabling deeper understanding and holistic problem-solving. True understanding originates from Allah, the ultimate source of all comprehension. The Prophet ﷺ said: "Whomever Allah wills good for, He grants him understanding of the religion." (Bukhari: 71). Similarly, with respect to financial accounting and writing skills, the Qur'an affirms: "The scribe should not refuse to write, as Allah has taught him." (Al-Baqarah 2:282)

2. Purpose and Importance of This Book

Presenting Financial Transactions in an Accessible Form: This study aims to clarify financial transactions in a manner that is rigorous yet accessible, enabling specialists, students, and practitioners to engage with financial matters on a sound, evidence-based foundation. This approach reflects the Qur'anic call to clarity and insight:

"Say, 'This is my way; I invite to Allah with insight, I and those who follow me.'" (Yusuf 12:108)

Highlighting Scientific Dimensions in Shariʿa Texts: This book demonstrates the connection between mathematics and revelation, presenting this link as a manifestation of the Qur'an's divine precision. The importance of this study lies in its function as a jurisprudential laboratory, much like engineering, architectural, or medical laboratories that analyze complex realities before decisions are made.

For example, in architecture, soil-testing laboratories examine soil samples to determine their properties before laying the foundations. In health sciences, medical laboratories play a vital role in detecting, diagnosing, and treating diseases — without them, many conditions would remain unidentified.
Similarly, when this study addresses juristic disagreements, it operates much like a diagnostic process: identifying the issue, analyzing its causes, and clarifying the correct ruling. In this sense, juristic inquiry resembles the work of a physician treating illness. The Prophet ﷺ linked medical and juristic

reasoning when he said: "Asking questions is the cure for the disease of ignorance." (Sahih Sunan Abi Dāwūd: 336).

This approach opens wider horizons for both scholarly inquiry and applied financial research. Allah says: *"You have been given of knowledge only a little."* (Al-Isrā 17:85).

Establishing a Solid Foundation for Economic Stability: The study contributes to reducing disputes[1] and inconsistencies in financial practice. This, in turn, strengthens economic foundations and promotes fairness and stability in commercial dealings. Guided by the Qur'anic verse, *"Come to a word that is equitable between us and you"* (Āl ʿImrān 3:64), this study adds a meaningful dimension to the broader dialogue on developing a uniform international trade law by clarifying the conceptual foundations of financial transactions.

3. Methodology

The research methodology integrates **comparative juristic analysis**, **practical application**, and a blend of **deductive** and **inductive reasoning**:

- **Comprehensive data collection** on each issue;
- **Comparative review of scholarly opinions;**
- **Use of deductive methods to derive rulings from principles;**
- **Use of inductive methods** to identify general rules from specific cases.

Induction — well established in **mathematics**[2] and **linguistics** — enables the formulation of **consistent legal and financial principles**. The use of examples is likewise essential, as it clarifies abstract concepts, strengthens legal reasoning, and helps readers follow the logical development of the subject. For this reason, the Qur'an repeatedly employs examples, as Allah says: *"And present to them an example."*

[1] Although disagreement is inevitable, Sharīʿa obligates that it be resolved by reference to Allah and His Messenger, as Allah says: "And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day." (Nisa': 59).

[2] It has been proven by induction that there is a relationship between the sums of odd numbers and their squares, for example: $1 + 3 = 2^2$ and $1 + 3 + 5 = 3^2$, and so on.

Dealing with Juristic Opinions

First, the study adopts the linguistic meaning of the term, rather than its terminological usage, since the Qur'an was revealed in Arabic. Second, it considers the differing opinions of Sharīʿa scholars as part of a constructive scholarly discussion — as ʿUmar ibn ʿAbd al-ʿAzīz said: "I would not be pleased to have red camels in exchange for their disagreement." (Al-Iʿtiṣām, al-Shāṭibī, 3:125). This approach reflects the Qur'anic directive: *"Those who listen to the Word and follow the best of it — those are the ones Allah has guided, and they are people of understanding."* (al-Zumar 39:18).

Differences of opinion can be either **negative** or **positive**. They may resemble a group of travelers who dispute which route to take, resulting in division — some heading north and others south — a situation cautioned against in the Prophetic instruction: *"Do not turn your backs on one another."* (Ṣaḥīḥ Muslim: 6526). However, when disagreements are resolved and the group ultimately unites upon a single route, the result is positive and productive — an example worthy of emulation in the pursuit of uniform international trade law.

Dealing with Constants and Variables

The study focuses on **constants** rather than **variables**. The Prophetic statement sets out this distinction: "Muslims are bound by their conditions, except for a condition that makes the lawful unlawful, or the unlawful lawful." (Ṣaḥīḥ Sunan al-Tirmidhī: 1352). The first clause pertains to variables — matters that may change according to circumstance — whereas the exception relates to the constants.

The constants (thawābit) are matters that never change, as reflected in Allah's command to *"give full measure and weight with justice"* (al-Anʿām: 152). Their permanence is comparable to foundational principles in arithmetic: just as *1 + 1 = 2* does not change, so too these constants are fixed by their very nature — without implying conceptual rigidity or resistance to contextual application. Variables, by contrast, are not eternal; they include measures tied to circumstance, such as a ruler's administrative directives: *"You will plant for seven years consecutively; and what you harvest, leave in its spikes, except a little from which you will eat."* (Yūsuf: 47). Similarly, a farmer may irrigate his land today or the next day, or pollinate his palms today or on another day

— all of these are variables. Modern traffic regulations offer another example: at a red light, drivers must stop, and at a green light, they may proceed — rules that authorities can alter at any time; they may even replace the familiar red–green system entirely with different colors, such as blue and yellow. Such matters fall under the Prophet's statement: *"You have better knowledge of the affairs of your worldly life."* (Ṣaḥīḥ Muslim: 6128). This hadith indicates that policymaking, regulations, and standards aligned with Sharīʿa constants fall within Sharīʿa-compliant action (*ʿamal ṣāliḥ*). Accordingly, fulfilling both constants and variables in such cases is rewardable under these hadiths and the Qur'anic verses.

Based on the above, **constants do not admit alteration, while variables permit contextual adjustment**. The Prophet ﷺ blamed certain actions because a constant principle was violated — as in his statement: *"Beware! This is definitely Riba! Do not do that!"* Yet he did not blame the Companions when he instructed them to hasten to a specific location and pray there, even though they differed over the timing of the prayer: some prayed before reaching it, and others prayed upon arrival. Here, the constant principle — the prayer obligation — was agreed upon, while the point of dispute related only to the place of its performance. Thus, the Prophet did not censure either group — as they all prayed, whether on time (adāʾ) or as a make-up (qaḍāʾ).

Dealing with Empirical Sciences and Practical Experience

The study highlights the role of empirical knowledge and the value of learning from others' beneficial experiences, as illustrated in the Qurʾānic narratives. This is seen in the story of Moses (Mūsā) with the righteous servant (al-Kahf: 66), and in the account of the two sons of Adam. After one son killed the other, he faced an unprecedented problem: how to deal with his brother's body. Allah then sent a raven that scratched the earth, showing him the method of burial. Upon seeing this, he realized that the solution had existed before him, though it had been unknown to him until that moment (al-Anʿām: 5:31).

From this, we may conclude a broader principle: while solutions often already exist in the world, it remains the responsibility of individuals or relevant authorities to recognize, adopt, and apply them — or to neglect and disregard them. It is rational to acknowledge that the Earth is a universal gift

and creation available to all humanity; what is irrational is to ascribe truth, wisdom, or solutions exclusively to a specific group of people.

4. Structure of the Book

After the foreword and introduction, the book is organized into the following chapters and sections:

- Chapter One: Debt: Concept and Applications
    - Section One: Al-Tadāyun as a Standard
    - Section Two: Set-Off: General Concepts
- Chapter Two: Muʿāwaḍāt Contracts
    - Section One: Sale
    - Section Two: Order Contracts (Salam, Istisnāʿ, and Tawrīd)
- Chapter Three: Hiba (Gifts)
    - Section One: Gift and the Debt It Creates
    - Section Two: Revocation of Gifts (Hiba)
    - Section Three: End-of-Service Benefits
- Chapter Four: The Role of Wakālah (Agency) in Activating Guarantee and Transfer (Ḥawāla)
    - Section One: Agency in Guarantees and Transfers
    - Section Two: Contemporary Applications of Transfer (Ḥawāla)
    - Section Three: Contemporary Applications of Guarantees (Letter of Guarantee as a Model)
- Chapter Five: Manāfiʿ (Benefits / Usufruct)
    - Section One: The Juristic Reality of Manfaʿah
    - Section Two: Priority Rights
    - Section Three: Ijāra (Leasing / Hiring)
- Chapter Six: Mushāraka and Profit Distribution
    - Section One: Sharika (Companies)
    - Section Two: Sharing in Profits and Output
    - Section Three: Contemporary Applications of Sukūk
- Chapter Seven: Ribā (Usury)
    - Section One: Usury in Financial Transactions
    - Section Two: ʿArāyā: Fresh for Dry Dates

- Chapter Eight: Zakāt on Debt
    - Section One: The Reality of Zakāt on Debt
    - Section Two: Current Accounts

Chapter One:
Debt: Concept and Applications

- **Section One: Al-Tadāyun as a Standard**

- **Section Two: Set-Off: General Concepts**

Section One:
Al-Tadāyun as a Standard

Upon examining the Sharīʿa texts, we find numerous verses affirming — explicitly or implicitly — that all matters have been made clear and accessible. Allah Almighty said:

- *"And We have sent down to you, [O Muhammad], the Book as clarification for all things."* (al-Nahl: 89)
- *"And if you disagree over anything, refer it to Allah and the Messenger, if you believe in Allah and the Last Day. That is better and more suitable for final determination."* (al-Nisā': 59)

What is required of us is to extract the guidance contained in Sharīʿa texts, just as gold must be mined from the earth. If someone lives in a land full of gold but does not know how to extract it, the problem lies not in the land but in his ignorance. Likewise, the Sharīʿa contains solutions to every issue; our task is to uncover and apply them.

In the realm of financial transactions, this requires a deeper understanding — most critically, the nature of debt. Interestingly, the longest verse in the Qur'an is dedicated precisely to this topic. Allah Almighty says:

"O you who have believed, when you enter into a tadāyun — a transaction of mutual debt — and one of the debts is deferred to a fixed term, then put it in writing. And let a scribe write for the parties in justice." (al-Baqarah: 282)

This verse highlights that debt is not just a financial arrangement — it is the **fundamental unit of accounting**. The role of the scribe here is effectively that of an accountant, tasked with recording the obligation to ensure the rights of all parties are preserved. Notably, Allah did not command either the debtor or the creditor to write it themselves; rather, He entrusted the responsibility to a neutral third party.

In parallel, modern accounting operates on the principle of double-entry bookkeeping: every transaction is recorded as both a **debit** and a **credit**. These very terms — debit and credit — originate from the language of **debt**.

Moreover, today's financial institutions issue reports that list their assets and liabilities. Even a company's capital (or equity) appears as a liability — an acknowledgment that it is not absolute ownership, but rather a trust. This reality mirrors what Allah says:

- *"And give them from the wealth of Allah which He has given you."* (al-Nūr: 33)
- *"Believe in Allah and His Messenger and spend from that over which He has made you trustees."* (al-Ḥadīd: 7)

Ultimately, Allah alone is the true Owner; man is merely entrusted with His wealth.

Topic 1: The Concept of Tadāyun

Allah Almighty made tadāyun the standard by which justice is measured in financial dealings. To analyze modern transactions and resolve their problems, we must first understand the meaning of this word in the verse:

"When you enter into a tadāyun — a transaction of mutual debt — and one of the debts is deferred to a fixed term, then put it in writing." (al-Baqarah: 282)

Notice that Allah first mentions *tadāyun* (mutual indebtedness) and then speaks of *one debt* that must be recorded. Misunderstanding this point may lead to confusion regarding banking and financial contracts. Because Sharīʿa texts are interconnected, we must first clarify what tadāyun or mudāyanah means in the Arabic language. In essence, it refers to a situation where each party is indebted to the other.

- Al-Fakhr al-Rāzī said: *"The true meaning of mudāyanah is that each party is indebted*[3]*."*
- Al-Qāsimī wrote in his Tafsīr: *"Mudāyanah is an action of two people... It is a debt from each of the parties*[4]*."*

[3] Tafsir Al-Kabir: (al-Baqarah: 282)

The word *tadāyun* is on the same morphological pattern as *taʿāwun* ("mutual help"), where both parties act. As Allah says: *"And help one another in righteousness and piety."* (al-Mā'idah: 2)

Shaykh al-Shaʿrāwī explained that this *tafāʿul* pattern indicates bilateral action[5] — as also seen in:

- *Tawāʿud* (mutual promise[6]): *"And if you had made a mutual appointment (tawāʿud)…"* (al-Anfāl: 42)
- *Talāwum* (mutual blaming): *"Then they turned to one another, blaming each other."* (al-Qalam: 30)

Similarly, *tadāyun* shows **a debt owed by each side** — an exchange of obligations: "this for that," a favor for a favor[7]. The Qur'an gives many parallels:

- *"Is there any reward for good other than good?"* (al-Raḥmān: 60)
- *"The retribution for an evil is an evil like it."* (al-Shūrā: 40)
- *"That is the Day of mutual loss (taghābun)."* (al-Taghābun: 9)
- *"So He rewarded you with grief for grief."* (Āl-ʿImrān: 153) — meaning a counterbalancing grief, as explained by al-Qurṭubī quoting al-Ḥasan[8].

Even *qiṣāṣ* (legal retribution) follows this logic: *"Life for life, eye for eye… wound for wound[9]."* (al-Mā'idah: 45). In accounting terms, *al-mudāyanah* (debt exchange) and *al-mujāzah* (recompense) are compatible. Allah Himself is *al-Ḥasīb* — the Accountant — who keeps perfect records:

---

[4] Tafsir Mahasin Al-Ta'wil: (al-Baqarah: 282)
[5] Tafsir Al-Shaʿrawy: (Al- Ma'idah: 2)
[6] See: Tafsir Al-Shaʿrawy: (Al-Anfal: 42)
[7] Tafsir Al-Kashaf by Al-Zamakhshari: (Surat Yusuf: 27)
[8] Tafsir Al-Qurtubi: (Al-Imran: 153).
[9] It is worth noting Almighty Allah's saying: "And strike them فاضربوهن" (al-Nisāʾ 4:34), which refers to a symbolic, non-injurious strike; otherwise, the principle of 'wound for wound' (qiṣāṣ) would apply to the striker.

"When you are greeted, greet in return with one better than it or at least return it in a like manner. Indeed, Allah is ever, over all things, an Accountant." (al-Nisā': 86)

Justice demands balanced scales:
Allah said: *"We sent Our messengers with clear proofs and sent down with them the Scripture and the Balance so that people may maintain justice."* (al-Ḥadīd: 25)

If one side of the scale is empty, the system collapses. If a debtor dies, his debt remains — because **there is no opposite debt to set off against it**, as the Prophet ﷺ said: *"All the sins of a martyr are forgiven except debt*[10]*."*

Thus, **"debt for debt" simply means setting off one debt against another** — the principle of justice in exchange. This is the foundation of our analysis: to apply the Qur'anic standard of tadāyun as a key to resolving juristic disagreements and clarifying the reality of financial transactions.

Topic 2: How Jurists Used "Debt for Debt"

The concept of *dayn bi-dayn* (debt for debt) has long preoccupied jurists, who used it as a standard for evaluating various transactions — though they have disagreed over what actually constitutes "debt for debt." Here are examples:

1. Renting a house against a debt owed

Some jurists prohibited this, classifying it as debt-for-debt, while others permitted it, maintaining that it does not fall under that category.

Bidāyat al-Mujtahid states:
"As for debt-for-debt, the jurists unanimously prohibited it. However, they differed on whether certain cases fall under this prohibition. For example, Ibn

[10] Sahih Muslim: 4883.

al-Qāsim forbade renting a house against a debt owed, calling it debt-for-debt, whereas Ashhab allowed it, saying it is not debt-for-debt[11]."

2. Set-off between different currencies

Some jurists considered the offset of gold against silver invalid as *dayn bi-dayn* (debt-for-debt), while others permitted it.

Ibn Qudāmah said:
"If one party owes gold and the other owes silver, and they exchange (offset), it is invalid as it constitutes a sale of debt-for-debt (*bayʿ dayn bi-dayn)*. Al-Layth and al-Shāfiʿī held the same view, whereas Mālik and Abū Ḥanīfah permitted it[12]."

Ibn Taymiyyah (in *Tafsīr Āyāt Ushkilat*) approved it as *dayn sāqiṭ bi-dayn sāqiṭ* — debts that cancel each other[13].

3. Ḥawāla (transfer of debt)

Some jurists considered *ḥawāla* an exception to the prohibition of *dayn bi-dayn* (debt-for-debt), while others held that it is not a case of *dayn bi-dayn* at all.

Al-Muntaqā states:
"Judge Abū Muḥammad said that *ḥawāla* is an exception to debt-for-debt. Conversely, Judge Abū al-Walīd said, 'The correct view regarding *ḥawāla* is that it is not a case of debt-for-debt[14].'"

4. The Madīnah transaction

Some jurists permitted this transaction — in which the two counter-values are not exchanged at the time of contract — and did not regard it as *dayn bi-dayn* (debt-for-debt), while others prohibited it, considering it to fall under *dayn bi-dayn*.

[11] Bidayat al-Mujtahid: Vol. 2, p. 147.
[12] See: Mughni Ibn Qudamah: Vol. 6, p. 106. Al-Majmu' by Al-Nawawi: Vol. 4, p. 60.
[13] Tafsir Ayat Ushkilat By Ibn Taymiyyah: pp. 639-640.
[14] Al-Muntaqa Sharh Muwatta Malik: Vol. 6, p. 452.

Ibn Rushd stated in *al-Bayān*:
"Sālim ibn ʿAbdullāh said: 'We used to enter into a contract with a merchant to receive a certain amount of meat daily, and the price would be paid when we received our stipend. No one regarded that as *dayn bi-dayn* (debt-for-debt).' Mālik and his companions permitted this. It was also reported that Mālik did not allow it and considered it to be *dayn bi-dayn*[15]."

5. Delayed delivery and payment

If the seller delivers the goods later and the buyer pays later, some jurists prohibit it as *dayn bi-dayn* (debt-for-debt), while others hold the opposite view. Ibn ʿUthaymīn said:

"If someone buys one hundred *sāʿs* of wheat for one hundred riyals on the condition that he pays the price when the seller delivers the goods in the afternoon, tomorrow, or the day after, and does not defer the payment beyond that, is it valid or not? According to the *Madhhab*, it is not valid, as they consider it a sale of a *debt for a debt*. However, the correct view is that this is valid[16]."

Conclusion:
Jurists established "debt-for-debt" as a legal principle, yet they differed over what falls within its scope. The key lies in returning to the Qur'ānic term *tadāyantum* (2:282) — "mutual indebtedness" — and determining its precise meaning before attempting to resolve juristic disagreements or apply the concept to contemporary financial practices. This book builds upon that foundation.

Important Point
Islam is complete and addresses all issues, much like the earth, which contains abundant resources. Just as people employ tools and instruments to extract those resources, analogy (qiyās) is used with respect to Sharīʿa-related issues. However, qiyās is sometimes misunderstood as though it were an independent proof by which a textual ruling may be opposed or a new ruling generated. In

[15] Al-Bayan wa Al-Tahsil by Ibn Rushd: Vol. 7, p. 208.
[16] Al-Sharh Al-Mumti' by Ibn ʿUthaymīn: Vol. 9, p, 51.

reality, qiyās is intrinsically tied to the revealed texts, and two implications follow from this. First, no qiyās exists in the absence of a Sharīʿa text. Second, qiyās is not an independent source of legal authority; rather, it is used for classifying matters and issues in light of a Sharīʿa text.

All of this is derived from the jurists' definition of qiyās as "extending a known ruling (ḥukm) from an original case (aṣl) to a subsidiary case (farʿ) due to a shared effective cause (ʿillah)." On this basis, there is only one authoritative reference — the Sharīʿa text — that governs both the original and the subsidiary case, and not because qiyās independently generates legal authority.

Section Two:
Set-Off: General Concepts

Set-off is a fundamental accounting concept whereby mutual debts between two or more parties are cancelled, resulting in a net settlement. It is significant not only in worldly dealings but also in the Hereafter. Jurists, however, differed on whether set-off is a form of sale and whether debt is considered Māl (property). This section addresses these issues by presenting Qur'anic and Prophetic evidence through which it becomes clear that set-off is not classified as a sale and that debt is not Māl (property).

Topic 1: Opinions on Set-Off

1. Is debt considered Māl?

Jurists differed on whether debt counts as Māl — that is, tangible property or wealth.

- **Al-Zarkashi (Shāfiʿī)** reported two views from Al-Mutawallī:

"One view suggests that debt establishes the 'ruling of richness,' meaning that a creditor is considered wealthy for legal obligations (e.g., paying expiations), even if he only has debts owed to him.
The other view holds that Māl (money, property) must be something that exists in reality, while a debt is merely a claimable right that may later materialize into Māl, but is not Māl itself[17]*."*

- **Al-Sarakhsi (Hanafi)** stated:

"If a person swears by Allah that he has no Māl*, while someone owes him a debt and he does not own anything else, he has not broken his oath — because debt is not* Māl*. Māl is what a person possesses materially, and debt is not material ownership*[18]*."*

[17] Al-Manthur fi al-Qawa'id by al-Zarkashi: Vol. 1, p. 365
[18] Al-Mabsut by Al-Sarakhsi: Vol. 9, p. 14.

These statements show that debt is not real Māl *in its current form, even if it may eventually lead to* Māl.

2. Is set-off a form of sale?

Jurists also differed on whether offsetting debts (muqāṣṣah) constitutes a sale. The mutual debts may be **of the same type and amount** (e.g., 100 dirhams vs 100 dirhams) or of different types (e.g., gold vs silver). In the latter case, some jurists prohibited set-off, regarding it as a sale of one debt for another (*bayʿ dayn bi-dayn*), while others permitted it.

- **Al-Durar al-Saniyyah**:

"If the two debts are identical in type and term, there is no problem. If they differ — such as gold for silver — jurists differed: Ahmad prohibited it, while Sheikh Taqī al-Dīn [Ibn Taymiyyah] permitted it[19]*."*

- **Ibn Qudāmah** reported:

"If one man owes gold and another owes dirhams, exchanging the debts is invalid according to Al-Layth and Al-Shāfiʿī. Ibn ʿAbd al-Barr narrated that Mālik and Abū Ḥanīfah permitted it. In our view, it is a sale of one debt for another[20]*."*

- **Dr. ʿAbdullah al-Dershawī** summarized:

"The difference stems from interpretation. Whoever views set-off as a sale forbids it; whoever views it as a mutual discharge of debts allows it[21]*."*

Topic 2: Set-Off on the Mizān (Scale)

From the above discussions, two questions arise: Is the characterization — that offsetting debts constitutes a sale of one debt for another — correct? And is debt truly *Māl*?

[19] Al-Durar Al-Saniyah fi Al-Ajwibat Al-Najdiyyah: Vol. 6, p. 120.
[20] Mughni Ibn Qudamah: Vol. 6, p. 106.
[21] Almuqassat bayn Al-duyun Al-naqdia by Dr. Abdullah Al-Dershawi: p. 10.

We now place these issues on the *Mizān* (Scale), where *muqāṣṣah* (offsetting debts) operates, while *Māl* (money) and *bayʿ* (sale) do not.

Qur'ānic Evidence

Allah says:
"O you who believe, spend from what We have provided for you before there comes a Day when there will be no sale, no friendship, and no intercession." (al-Baqarah 2:254)

On the Day of Judgment, *māl* will be of no use. Instead, good deeds will act as the "currency" of accountability. Mutual wrongs will be **offset** — good deeds transferred or sins imposed — but neither a sale nor māl is involved.
This demonstrates two key points:

1. **Set-off** is not a **sale** — on that Day, there will be a set-off but no sale.
2. **Debt** is not ***māl***. If the indebted person truly possessed māl (such as what he borrowed) on that Day, he would return it — there is debt, but no māl.

Prophetic Hadiths

- Ibn ʿUmar narrated that the Prophet ﷺ said:

"Whoever dies owing a dinar or dirham, it will be repaid from his good deeds, for there will be no dinar or dirham there[22]*."*

- Abū Saʿīd al-Khudrī reported:

"When the believers are saved from the Fire, they will be stopped on a bridge between Paradise and Hell, and injustices among them will be set off until they are purified[23]*."*

- Abū Hurayrah reported that the Prophet ﷺ said:

"Whoever has wronged another in honor or anything else, let him seek forgiveness today, before there is neither dinar nor dirham. If he has good

[22] Sahih Sunan Ibn Majah: Grade: Sahih, (Albani): No. 1973, Vol. 2, p. 279.
[23] Sahih al-Bukhari: 2440.

deeds, they will be taken; if not, the sins of the wronged person will be placed on him[24]*."*

These narrations confirm:

- On the Day of Judgment, debts will be resolved by set-off of deeds — not by sale, money, or *māl*.
- Debts must be settled in this world.

Juristic Evidence Supporting Set-Off

Ibn Nujaym (Hanafi): "If one owes 100 dirhams and the other owes 100 dinars, they may offset by valuation, with any balance settled[25]."

Al-Mudawwana al-Kubrā (Mālikī): "If a man owes gold for a month, and another owes him the same amount of gold for a year, they may offset the debts[26]."

Ibn Taymiyyah stated in *Āyāt* Ushkilat[27] and Majmūʿ al-Fatāwa[28]: "If they set off dirhams and gold, the debt is simply extinguished — no ownership, unlike a sale." He added: "Set-off is permissible, not prohibited[29]."

Ibn ʿUthaymīn: "If a debt is gradually repaid in another currency, and at settlement, both parties offset the remaining amounts, this is valid and not a sale[30]."

Fatāwā al-Islām: "The strongest view (and Allah knows best) is that of the Ḥanafīs: set-off (muqāṣṣah) is valid even if the debts differ. This is not a sale but rather a mutual discharge of debts[31]."

---

[24] Sahih al-Bukhari: 2449.
[25] Al-Bahr Al-Ra'iq by Ibn Nujaym Al-Hanafi: Vol. 6, pp. 333-334. See also: AAOIFI Shariʿa standards (4: Set-Off).
[26] Al-Mudawwana Al-Kubra of Imam Malik: Vol. 9, p. 143.
[27] Tafsir Ayat Ushkilat By ibn Taymiyyah: p. 665.
[28] Majmu Fatawa ibn Taymiyyah: vol. 29, p. 512.
[29] Tafsir Ayat Ushkilat By ibn Taymiyyah: pp. 639-640.
[30] Al-Sharh Al-Mumti' by Ibn ʿUthaymīn: Vol. 8, p. 460.

Dr. ʿAbdullah al-Dershawī: "Set-off achieves the Sharīʿa objective of clearing debts efficiently, without needless transfer of funds. It is not *dayn bi-dayn* in the prohibited sense[32]."

Conclusion (key points)
From the Qur'ān, Sunnah, and juristic reasoning, the following becomes clear:

- **Debt is not *Māl* (property or money).**
- **Set-off is not a sale of debt for debt.**
- **Offsetting debts is permissible — whether identical or different — when both parties agree.**

Topic 3: Creditor vs Debtor

Now that we have clarified that set-off (muqāṣṣah) is not a sale and that debt (dayn) is not necessarily māl (property or money), we can examine how set-off operates in cases of mutual debt. The terms "creditor" and "debtor" do not merely describe a relationship where one party owes māl to another; they have a broader and more nuanced meaning, which we will explore in this topic.

Every transaction involves a creditor and a debtor. Even in our relationship with Allah, a person may be either a debtor or a creditor.

The following points elaborate on these categories:

1. Debts in a person's relationship with Allah
2. Debts among people — financial and non-financial
3. Interbank clearing — financial

1. Debts in One's Relationship with Allah

Allah describes a person as being indebted to Him, saying:
"Then some of them turned to others, questioning each other. A speaker among them said, 'Indeed, I had a companion who said, "Are you indeed

[31] Fatawa al-Islam by a group of scholars: fatwa 226430.
[32] Almuqassat bayn Al-duyun Al-naqdia by Dr. Abdullah Al-Dershawi: p. 46.

among the believers? When we have died and become dust and bones, will we then be debtors?"'" (Saffat: 50-53)

The answer is yes; all who commit sins are indebted to Allah. This is further emphasized in:
"Then why, if you are not indebted, do not return it (tarji'oonaha), if you should be truthful?" (Waqi'ah: 86-87)
The term *tarji'oonaha* is transitive here: "Why did you not return the debts if you were truthful[33]?"

Regarding a person being a creditor to Allah:
"Who will lend Allah a good loan so He may multiply it for him many times over?" (al-Baqarah: 245)

This implies that a good deed is considered a loan (*qarḍ ḥasan*) to Allah. Al-Kisa'i explains: *"A loan (qarḍ) is whatever good or bad deeds you have advanced*[34]*."*

Thus, a person may stand as a debtor to Allah when falling short in duties owed, and as a creditor to Allah when performing in His cause, assured of His promise of manifold reward.

2. Debts among People: Financial and Non-financial

Debt may arise from māl — for example, when one person lends money to another and receives money in return, which is considered *māl for māl*, or from non-māl obligations, such as injury or bloodshed. Debt, therefore, can be viewed from an accounting perspective, regardless of whether it originates from financial transactions or other personal obligations.

Debts establish a creditor–debtor relationship. For instance, if a person unjustly consumes another's māl (money or property), the consumer becomes a debtor and the owner the creditor. This does not mean, however, that every creditor is a lender, since not all debts originate from loans.

[33] Qisas Al'anbia' by Sheikh Muhammad Al-Shaʿrawy: Vol. 3, p. 1323.
[34] Tafsir Al-Qurtubi: Baqarah, 245.

When two people owe each other debts, the debts may be equal or unequal. Aisha (may Allah be pleased with her) narrated:
"A man sat in front of the Prophet ﷺ and said, 'O Messenger of Allah, I have servants who lie to me, deceive me, and disobey me, and I revile them and beat them. What is my position to them?' He said, 'The extent to which they betrayed you, disobeyed you, and lied to you will be measured against how much you punish them. If your punishment is equal to their sins, then the two are balanced (kafāf), neither for you nor against you. If your punishment is less, it will be extra to your credit. If your punishment is greater, some of your credit will be taken and given to them[35]*.'"*

This hadith confirms that set-off occurs when one party commits a wrongdoing and the other punishes them. The party to whom the larger debt is owed remains a creditor for the remaining balance.

The Prophet's statement, *"Neither for you nor against you,"* means that if the two debts are equal, they cancel each other out.

However, a person is considered bankrupt when their debts exceed their assets. If creditors take what they can, the debtor remains liable for the balance. Abu Sa'id al-Khudri narrated:
"During the time of the Prophet, a man suffered a loss affecting the fruits he had purchased and owed a substantial debt. The Prophet told the people to give him sadaqa, and they did, but it was not enough to pay the debt. Allah's Messenger said to his creditors: 'Take whatever you find; there is nothing for you but that[36]*.'"*

This demonstrates that the debt continues until fully repaid or waived, in accordance with Allah's guidance:

"And if the debtor is in hardship, grant him time till it is easy for him to repay; and if you waive it as an act of charity, it will be better for you." (al-Baqarah: 280)

[35] Sahih Sunan Al-Tirmidhi - Grade: Sahih (Albani): Hadith: 3165, Vol. 3, p. 283.
[36] Sahih Muslim: Hadith: 3981.

Al-Sindi explains:
"You have no right to rebuke or imprison the debtor because his bankruptcy is evident. He is left until he obtains māl for the creditors to take. This does not invalidate the remaining debt[37]*."*

This is further supported by the hadith narrated by Abu Hurayrah: The Messenger of Allah (peace be upon him) asked:
"Do you know who the bankrupt is?" They replied, "The bankrupt among us is the one who has neither a dirham nor any property." The Prophet ﷺ said, "The bankrupt of my Ummah will come on the Day of Resurrection with prayer, fasting, and zakāt, but he insulted this one, slandered this one, consumed the wealth of this one, shed the blood of this one, and struck this one. So, his good deeds would be credited to the account of this one and that one. If his good deeds are exhausted before his debts are settled, some of their sins will be taken and placed upon him. Then he would be thrown into the fire[38]*."*

Abdullah ibn Amr ibn al-'As also reported: *"All the sins of a martyr are forgiven except debt*[39]*."*
This makes clear that debts — whether arising from insults, slander, unlawful consumption of wealth, or harm — must be settled in this world; otherwise, they will be settled on the Day of Resurrection, even if the debtor's good deeds are exhausted.

Allah is with the Creditor
Since the creditor is the one who has been deprived of his māl or right, Allah supports him until the debt is settled. Abdullah ibn Ja'far reported that the Messenger of Allah (peace be upon him) said: *"Allah is with the creditor until the debt is settled, unless it is for something Allah dislikes*[40]*."*

[37] Sharh Sunan Ibn Majah by Abu al-Hasan al-Sindi: Hadith: 1922.
[38] Sahih Muslim: Hadith: 6579.
[39] Sahih Muslim: 4883.
[40] Sahih Sunan Ibn Majah: Vol. 2, p. 278, Hadith: 1968. Abu Al-Hasan Al-Sindi said: "His saying: 'with the creditor' means: in his aid."

Likewise, if a person kills another unjustly, the killer becomes a debtor — he owes a debt to the victim — while the victim is the creditor. Allah is with the creditor, as stated in the Qur'an: *"And whoever is killed unjustly, We have given his heir authority, but let him not exceed limits in [the matter of] taking life. Indeed, he has been supported."* (Isra: 33)
In *Tafsir al-Tabari*, it is narrated on the authority of Mujahid: *"Indeed, the one who* has been killed has been supported[41]."

3. Interbank Clearing: Financial

Interbank clearing occurs at the central bank's clearing house to settle debts between banks.

Example: Salam Bank and Amal Bank present checks to each other worth 100,000 dirhams each. The debts are equal (*kafāf*) and cancel out.

If the debts are unequal — e.g., Salam Bank presents 120,000 dirhams, and Amal Bank presents 100,000 dirhams — Amal Bank is debited 20,000 dirhams, and Salam Bank is credited the same. Their accounts are now net.

AAOIFI Sharīʿa Standards permit settlement of debts by set-off through a clearing house:

"A set-off may take place between a financial institution accepting a cheque and the drawer of the cheque, through the clearing-house. This form of set-off is a mandatory or contractual clearing, according to the availability of the conditions of one of them[42]*."*

Juristic Practical Statements

Early jurists affirmed that debts are extinguished against similar debts, and set-off requires reciprocal debts.

Al-Mawsūʿah al-Fiqhiyyah quotes the Hanafi school:

[41] Tafsir Al-Tabari: Al-Isra: 33.
[42] Shariʿa standards: 4: Set-Off.

"Before payment, the debt remains an existing debt owed by the debtor, and upon payment, a similar debt owed by the creditor arises. Each becomes a creditor and debtor to the other. Demanding physical payment from both sides brings no benefit. This is the established principle: debts are extinguished against similar debts[43]*."*

Ibn al-Qayyim said:
"If a creditor, who fears default of payment, borrows from the debtor an amount equal to his debt, and they set off, this is a valid settlement[44]*."* He also said: *"The creditor may purchase goods from the debtor for the purpose of set-off*[45]*."*

Similarly, if a creditor destroys an amount equal to the debtor's debt, the two debts cancel out — a true debt-for-debt transaction. *Mughni al-Muhtaj* states:

"The most correct opinion on set-off is that the two debts cancel each other out, with equality, without consent, and because demanding the same from one party brings no benefit[46]*."*

Some jurists note that repaying a debt in a different currency — for example, ten dirhams in exchange for a dinar — is regarded as a transaction that results in a valid set-off. This is because one party owes ten dirhams while the other owes one dinar — effectively creating a debt-for-debt situation that allows for set-off.

Dr. Wahba Al-Zuhayli explains:
"Set-off occurs between two debts of the same type, not between a debt and a physical asset ('ayn). Possession of the dinar creates a reciprocal debt, which cancels the original debt[47]*."*

---

[43] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 18, p. 232.
[44] Jami' al-Fiqh - Ibn Qayyim al-Jawziyya: Vol. 4, p. 372.
[45] See also: Jami' al-Fiqh: Vol. 4, p. 372.
[46] Mughni al-Muhtaj (Sharh al-Minhaj): Vol. 4, p. 706.
[47] Al-Fiqh al-Islami wa-Adillatuh - Dr. Wahba Al-Zuhayli: Vol. 5, pp. 373-374.

From an accounting perspective, the transaction ends with a set-off: debt for debt. Neither party owes the other once the debts are offset.

Conclusion

Dayn (debt) is not confined to *māl* or financial dealings; it may also arise from harm, injury, or other personal obligations. Recognizing this wider scope is key to distinguishing between *dayn* and *māl*, *muqāṣṣah* (set-off), and *bayʿ* (sale). The essence of *tadāyun* lies in the debt effect — whether it originates from *māl* or from injury. With this correct understanding, transactions that might otherwise appear impermissible can be properly classified as valid under Sharīʿa, and vice versa.

Chapter Two:
Muʿāwaḍāt Contracts

- **Section One: Sale**

- **Section Two: Order Contracts (Salam, Istisnāʿ, and Tawrid)**

Section One:
Sale

Sale (*bayʿ*) has both **general** and **specific** meanings. In its **general sense**, sale encompasses all human transactions, as the Prophet (peace be upon him) said: *"All people go out early in the morning and sell themselves, either setting themselves free or destroying themselves*[48]*."*
In its **specific sense**, sale refers to a particular type of financial transaction. It is this sense that Allah mentions: *"Allah has permitted sale and forbidden Ribā (usury)."* (al-Baqarah 2:275). This verse establishes the principle that sale, by its nature, is permissible, while also indicating that Islam has prescribed specific conditions governing its validity or invalidity — particularly in contexts where the risk of *ribā* may arise.

This section examines the following main topics:

- **The debt arising from possession (Qabḍ).**
- **Whether goods are acquired by contract or by possession.** To address this question, it is necessary to distinguish between the contract and possession; through this distinction and its implications, it becomes easier to determine when the buyer acquires ownership of the purchased item.
- **Selling an item before taking possession.**

Topic 1: Debt Arising from Possession (Qabḍ)

Analyzing debts — how they arise and how they are settled — forms an essential part of this study. It helps identify the root cause of the juristic disagreement. Once this foundation is clear, reaching a balanced position becomes more feasible.

For example, if you buy goods for one hundred dirhams on credit and take possession, you owe a debt of one hundred dirhams. Conversely, if you pay

[48] Sahih Muslim: Hadith: 223.

one hundred dirhams and the seller takes possession of the money, but you do not yet receive the goods, the seller owes you one hundred dirhams.

Thus, **possession itself creates debt**:

- When the **buyer** takes possession of the goods, he becomes a debtor to the seller.
- When the seller takes possession of the price, he becomes a debtor to the buyer.

Deeper Practical Example

C purchases goods from A for 1,000 dirhams on credit. After one month, C settles the debt by paying A 1,000 dirhams.

At first glance, this appears to be goods exchanged for money (māl for māl). In reality, however, two debts arise and offset each other.
Analytically, when C took possession of the goods, **a debt arose** — C owed 1,000 dirhams to A. When A later received the payment, **another debt arose** — A owed C 1,000 dirhams. These two debts automatically **cancel each other by set-off** (*muqāṣṣah*), in accordance with Allah's statement: *"When you enter into a tadāyun…"* (al-Baqarah 2:282).

Tadāyun Scale of Balance

- **First debt:** C owes A (because C received goods).
- **Second debt:** A owes C (because A received money).

Both parties thus become **creditor** and **debtor** once they have taken possession of the goods and the price. Their mutual debts cancel out by set-off (dayn bi-dayn).

The *Mawsuʿah al-Fiqhiyyah*, quoting the Hanafi school, states:
"Before payment, the debt remains with the debtor. Once paid, a similar debt arises for the creditor who received the payment. Thus, each becomes both creditor and debtor, and claims on both sides are prevented because they no

longer serve a purpose. This is set-off. Hence, the established principle of the Hanafis: *debts are extinguished against similar debts*[49]."

The meaning is clear:

- If you owe someone, you are a debtor, and he is a creditor.
- When he later owes you, he becomes a debtor, and you become a creditor.
- These debts meet and extinguish one another by equivalence.

This principle parallels **double-entry accounting**, where each transaction has two equal sides: debit (the receiving side) and credit (the giving side). The "giver and receiver" principle is exactly what classical jurists[50] described in set-off (*tadāyun)*.

Tadāyun in Immediate Transactions

Because a debt arises upon possession — whether of goods or price — tadāyun can occur even in immediate transactions (ʿayn bi-ʿayn), not only in deferred ones. Allah says:

"O you who have believed, when you enter into a tadāyun — a transaction of mutual debt — and one of the debts is deferred to a fixed term, then put it in writing… except when it is an immediate transaction which you carry out on the spot among yourselves, then there is no blame upon you if you do not put it in writing." (al-Baqarah 2:282)

This indicates that debt can also arise in present trade. Al-Zajjāj, in Maʿānī al-Qurʾān wa-Iʿrābuh, explains the reading of ʿĀṣim: "The phrase 'except when it is an immediate transaction' means: unless the mudāyanah is a present trade[51]."

This means that debt arises from both present (immediate) and deferred transactions. In spot exchanges, where goods and price are delivered hand-to-hand, the two debts (*tadāyun*) arise simultaneously — one for each party —

[49] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 18, p. 232.
[50] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 1, p. 157.
[51] Ma'ani al-Quran wa Irabuh by Al-Zajjaj: (al-Baqarah: 282)

and are extinguished by automatic set-off. Because no debt remains outstanding, Allah did not require such immediate trades to be recorded in writing, unlike deferred debts.

Concluding Principle

Every transaction — whether an immediate or deferred sale, lease, or service contract — ultimately resolves into two corresponding debts that offset each other upon fulfillment. What appears outwardly as *māl* for *māl* (goods for money) is, in essence, a cycle of mutual indebtedness that concludes in settlement. This Qurʾānic framing of *tadāyun* provides not only a juristic foundation but also a conceptual bridge between classical *fiqh* and modern financial analysis.

Topic 2: Are Goods Acquired by Contract or by Possession?

Jurists differed on whether the buyer acquires ownership of the sold item merely by entering into the sale contract or only upon taking possession of it.

Some jurists held that ownership isn't finalized until possession takes place.

Imam al-Shāfiʿī said:
"If I sell goods I bought before taking possession of them, then I am selling something I have not fully owned, and that is not permissible[52]."

However, other jurists argued that ownership transfers immediately upon the conclusion of a valid sale contract.

The *Mawsūʿah al-Fiqhiyyah* stated:
"The buyer owns the sold item, and the seller owns the price. The buyer's ownership begins as soon as the valid sales contract is concluded and is not dependent on possession[53]."

[52] Al-Umm of Imam al Shafi'i: Vol. 4, p. 67. Al-Aziz Sharh Al-Wajeez by Al-Rafi'i: Vol. 4, p. 312.
[53] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 9, p. 36.

Similarly, Ibn Qudāmah said:
"Ownership is transferred to the buyer once the contract is concluded, according to the most apparent of the two narrations[54]."

To resolve this disagreement, we must first clarify the distinction between **contract** and **possession**, and then employ the principle of *ibtidāʾ dayn bi-dayn* (initial debt-for-debt). The question is: *Does a debt arise merely from the sale contract before possession (qabḍ)?*

1. The Difference Between a Contract and Possession

The very fact that jurists ask, "Does the buyer own the goods by contract or by possession?" proves there is a difference between the two. A contract is one thing, and possession is another. Allah Almighty says:

"O you who have believed, fulfill the contracts." (al-Māʾidah: 1)

This verse indicates that contracts must first be concluded and then fulfilled. Likewise, the Prophet ﷺ said: *"Muslims are bound by their conditions[55]."*

From this, we see that a **contract creates obligations**, whereas **possession gives rise to debts**.

- **Obligation** arises immediately upon signing the contract. The seller is obligated to deliver the goods, and the buyer is obligated to pay the price.
- **Debt** arises only once possession of the goods or the price has actually taken place.

Effects on the parties

- When the contract is signed, each side has an obligation — but no debt yet.
- When the seller delivers the goods, his obligation is fulfilled. At this moment, the buyer incurs a debt. This means that he now bears both an

[54] Al-Muqni' - Ibn Qudamah: p. 159.
[55] Sahih Sunan al-Tirmidhi - Grade: Sahih (Albani): Vol. 2, p. 77, Hadith: 1352.

obligation (arising from the sale contract) and a debt (arising from possession, since payment has not yet been made).

- When the buyer pays, his obligation to deliver the price is fulfilled, and the seller incurs a debt because he has received it.
- The two debts — arising from possession of the goods and the price — then offset each other (*tadāyun*), which is valid as "debt-for-debt in the end."

This demonstrates that **obligation precedes debt**: contracts create obligations, while possession creates debts.

2. Using Initial Debt-for-Debt

After discussing the implications that arise from the contract and from possession — such as debts and obligations — this section addresses the ownership dispute by examining the concept of "initial debt-for-debt." This is distinct from *tadāyun* (debt for debt), which occurs when a transaction is fulfilled and both counter-values are delivered.

The phrase "initial debt-for-debt" refers to impermissible debts that arise at the very outset of the contract stage, before possession takes place. These debts are impermissible because they cannot be recorded as payable debts. They arise only when a transaction is misconceived.

If ownership were assumed to transfer by contract alone, then the buyer would be deemed to own goods still in the seller's possession, and the seller would be considered to own money still in the buyer's possession. Both parties would thus be treated as debtors simultaneously, each owing the other an item that has yet to be delivered. This constitutes ibtidāʾ al-dayn bi'l-dayn, which is impermissible because it treats reciprocal obligations as if they were actual, recordable debts.

Juristic evidence

Dr. Wahbah al-Zuhaylī wrote:

"Sharīʿa scholars have prohibited what is called initial debt-for-debt[56]."

[56] Bayʿ al Dayn fi Al-Sharīʿa - Dr. Wahba Al-Zuhayli: p. 48.

Some jurists termed this *wājib bi-wājib* and likewise forbade it. Ibn al-Qayyim said regarding this type of sale:
"As for selling debt-for-debt, it includes selling *wājib bi-wājib*, which is forbidden[57]"
It is clear that if no possession has occurred, neither party truly owes a debt. Any claim of "you owe me" before delivery is baseless. Therefore, ownership cannot transfer merely by contract; otherwise, the transaction would fall under the prohibition of initial debt-for-debt.

Application to Loans (Qarḍ)
The same principle applies to loans. If a man says, "Lend me 100 dirhams," and the lender agrees, does the borrower incur a debt immediately — or only once the funds are handed over? If the debt arose merely from the contract, the borrower would be liable before receiving the money — an illogical and impermissible form of initial debt-for-debt. The sounder opinion, held by the majority, is that ownership (and thus debt) arises only upon possession[58].

Concluding Principle
Initial debt-for-debt is an important principle for preventing the treatment of mere obligations as payable debts, thereby avoiding prohibitions and illogical contractual consequences.

3. A Contract May Exist While Possession Is Delayed

A sale contract may be validly concluded even if delivery is delayed. The Prophet ﷺ purchased a camel from Jābir ibn ʿAbdullāh outside Madinah but stipulated that possession would take place later, after Jābir had ridden it home. Jābir narrates that the Prophet ﷺ paid him afterward when they arrived in the city[59]. Thus, in Jābir's case, the Prophet ﷺ entered into a valid sale agreement, but neither ownership nor any debt arose until actual delivery took place.

[57]I'lam al-Muwaqqi'in - Ibn al-Qayyim: Vol. 3, pp. 172-173.
[58] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 30, pp. 231-232.
[59]Sahih Muslim: Hadith: 4098.

This shows that **contract and possession are distinct stages**. The place and timing of delivery (qabd) are determined by the parties' agreement — whether it occurs immediately at the place of contract (majlis al-ʿaqd; meaning that delivery would take place outside Madinah, where the sale was concluded) or at another agreed location (such as upon arrival in the city). Jābir's case illustrates the broader Prophetic principle: "Muslims are bound by their conditions."

It is therefore important not to conflate the **constants** (thawābit that cannot be violated) with the **variables** (mutaqayyirāt governed by this hadith and shaped by mutual agreement).

Other Practical Examples:
Suppose a buyer purchases goods in the morning while agreeing that the merchant will deliver them in the evening because the truck is unavailable. Payment may be made at the time of the sale contract or deferred to a later time, as agreed by the parties. Similarly, electronic agreements may be concluded online, with delivery taking place afterward. All of this is valid because concluding a contract is not the same as taking possession of the goods.

Conclusion (key points)

- A sale contract creates obligations, not immediate debts.
- Debt arises only upon possession.
- If ownership were treated as transferred by contract alone, it would entail an impermissible debt-for-debt.
- The sound view is that ownership — and liability — arise with possession, not merely at the contract stage.

This distinction safeguards transactions from invalid debt recording and aligns with the Sharīʿa principle forbidding *ibtidāʾ dayn bi-dayn*.

Topic 3: Selling an Item Before Taking Possession

Deduction (istinbāṭ) is a fundamental tool in deriving legal rulings and establishing methodological standards in Islamic jurisprudence. Among its

guiding principles is: "**A Sharīʿa text is generalized, not confined to the specific circumstance in which it was revealed or stated**." This means that the legal text does not operate only within the context of the incident in which it was first mentioned; rather, its ruling extends beyond that specific situation.

With this principle in mind, the issue under discussion is whether one may sell an item before taking possession of it.

Ibn ʿUmar (RA) narrated that the Messenger of Allah (peace be upon him) said:

"Whoever buys food should not sell it until he takes possession of it[60]*."*

Jurists unanimously agree that selling food before taking possession is impermissible, but they differ regarding non-food items. Ibn al-Mundhir summarized these differences as follows:

- **First view:** Nothing may be sold before possession, just as in the case of food. This is the opinion of al-Shāfiʿī and Muhammad ibn al-Hasan.
- **Second view:** No item may be sold before possession, except houses and land. This was the view of Abū Ḥanīfah and Abū Yūsuf.
- **Third view:** Any item may be sold before possession, except that which is measured or weighed. This was held by ʿUthmān ibn ʿAffān, Saʿīd ibn al-Musayyib, al-Hasan, al-Hakam, Hammād, al-Awzāʿī, Ahmad, and Isḥāq.
- **Fourth view:** Any item may be sold before possession, except food and drink. This was the opinion of Mālik and Abū Thawr[61].

The key question is: **Does the prohibition apply to food alone, or does it include other goods as well?**
Before answering, it is necessary to classify the types of goods being sold.

Distinguishing Between Different Cases of Possession

[60] Sahih Al-Bukhari: Hadith: 2133.
[61] Al-Majmu' by al-Nawawi: Vol. 9, pp. 326-327. See also: Bidayat al-Mujtahid by Ibn Rushd: Vol. 2, p. 144.

A sold item might be:

1. In the seller's hands at the time of sale.
2. In the hands of a third party (e.g., a leased asset).
3. In the hands of the buyer before the contract (e.g., a deposit or leased item).
4. In the hands of a partner.

We must also distinguish between **goods (ʿurūḍ)** and **usufruct (manfaʿah)**, because usufruct follows different legal rulings.

This discussion focuses on the **first scenario**: when the item remains in the **seller's possession** at the time of sale, and the buyer wishes to resell it. As for the other scenarios — where the property is held by an agent, trustee, or partner — the item is considered to have already been received by the buyer when the sale contract is concluded.

Goods in the Seller's Store

As previously noted, **ownership transfers through possession, not merely through contract**. Therefore, the buyer may not resell the item before taking possession, whether the goods are food or not. Although the hadith mentions food specifically, it does so because of the situation at hand — not because the ruling applies only to food. If someone asks, "May I sell food before taking possession?" the answer is: *"Do not sell it before possession."* But this principle applies to **all goods** alike. The following juristic statements clarify this point and apply specifically to cases where the goods are in the seller's store.

Juristic Views (the prohibition applies to all goods)

- **Ibn ʿAbbās said:** *"What the Prophet forbade was selling food before taking possession. I consider everything else to be the same*[62]*."* This

[62] Sahih Al-Bukhari: Hadith: p. 2135.

means that, by analogy to food, no item may be sold before it has been possessed[63].

- **Imām al-Shāfiʿī:** *"It is not permissible to sell any goods before taking possession — food, real estate, movables, or cash[64]."* **Shāfiʿī reasoning:** *Ownership is weak before possession. If the item perishes, the contract collapses, proving that the buyer has sold what he does not yet truly own[65].*
- **Ḥanafī scholars Zufar and Muhammad ibn al-Hasan:** Agreed on the same prohibition, citing the generality of the hadith[66].
- **Ibn al-Qayyim:** *"It is not permissible to sell anything before taking possession, in any circumstance. This is the opinion of Ibn ʿAbbās, Muhammad ibn al-Hasan, and one narration from Ahmad. It is the correct view, and we adopt it[67]."*

Contemporary Endorsements

Shaykh Ibn Bāz: "The hadith mentions food because of the immediate context, not limitation; the ruling extends to all goods[68]."

Shaykh Ibn ʿUthaymīn: *"The correct view is that no item may be sold before possession[69]."*

Dr. Wahbah al-Zuhaylī: "The Shāfiʿī view is the strongest because the hadith of Ḥakīm ibn Ḥizām prohibits selling anything before possession, not only food[70]."

Dr. al-Ṣiddīq al-Dharīr: Agrees with the Shāfiʿīs, Zaydīs, and Ẓāhirīs that nothing may be sold before possession[71].

Dr. Samīr ʿAbd al-Ḥamīd supports the narration from Aḥmad forbidding the sale of all goods before possession, citing the Prophet's words to Ghiyāth ibn Asad: *"Forbid them from selling what they have not received or from profiting*

[63] See: Hashiyat Al-Bujayrimi 'ala al-khatib: Vol. 3, p. 301.
[64] Sharh Sahih Muslim by Al-Nawawi: Vol. 4, p. 130.
[65] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 9, p. 124.
[66] See: Awjaz Al-Masalik – Muhammad Zakaria: Vol. 12, p. 584.
[67] Jami' al-Fiqh - Yasser al-Sayyid Muhammad: Vol. 4, p. 192.
[68] Majmoo al Fatawa Ibn Baaz: Vol. 19, pp. 116-117.
[69] Al-Sharh al-Mumti' - Ibn ʿUthaymīn: Vol. 8, p. 372.
[70] Majallat Majmaʿ al-Fiqh al-Islami: Issue 6, Vol. 2, p. 1329.
[71] Majallat Majmaʿ al-Fiqh al-Islami: Issue 6, Vol. 1, pp. 480-481.

on what is not guaranteed[72]*."* He adds: *"The prohibition applies to food and all other items, without any doubt*[73]*."*

Refutation of the Opposing Evidences

Suppose A sells a car (a non-food item) in his showroom to B. May B sell it to a third party before taking possession? As discussed, the preferred opinion affirms that resale requires prior possession. Nonetheless, some jurists held the opposite view and grounded their position on three main lines of reasoning:

1. A narration regarding debt settlement.
2. Analogies drawn from inheritance, wills, waqf, and gifts.
3. The report of Ibn ʿUmar concerning the sale of a camel.

In what follows, each of these evidences will be reviewed and answered in turn.

1. Debt Settlement in a Different Currency

A narration from Ibn 'Umar reports: *"We used to sell camels at al-Naqiʿ for dirhams, and take dinars for them, and vice versa*[74]*."* Some jurists argued that if one may dispose of the price before possession, one may likewise sell the goods before possession. Yet scholars have described the narration as weak (ḍaʿīf). In any case, it relates to debt settlement, not to a sale. Suppose A sells camels to C on credit; when C later settles the debt — whether in dinars or dirhams — this is simply a case of extinguishing the outstanding debt.

Tadāyun Balance

- **Debt 1:** C owes A (the original debt arising from taking possession of the camels).
- **Debt 2:** A owes C (because A has received money that offsets the original debt).

These two debts cancel each other out.

[72] Almushtaqat al-Maliyah by Dr. Samir Abdel Hamid Ridwan: p. 510.
[73] Almushtaqat al-Maliyah: p. 513.
[74] See: Irwa' al-Ghaleel by Albani: Grade: weak (ḍaʿīf). Vol. 5, p. 173, No. 1326.

2. Inheritance and Similar Forms of Ownership

Some jurists hold that since inheritance, wills, waqf proceeds, or gifts are owned before possession, the same should apply to the sale of non-food items[75]. However, these matters do not fall under the category of sales, where the transfer of possession is a condition, as established by the hadith[76]. It is essential to distinguish between different types of transactions. The Prophet ﷺ clarified such conflation in a similar case when he said: *"It is charity for her, and it is a gift for us"* — indicating two distinct transactions with different implications.

3. A Purchased Camel That Is Then Gifted

The Prophet ﷺ purchased a camel from ʿUmar and then gifted it to Ibn ʿUmar[77] before taking physical possession. Some claim this proves a general permissibility. However, the camel was in the hands of a trustee, not the seller, making it as though already possessed by the buyer. Such cases (e.g., goods held by a renter, partner, or depositary) have separate rulings.

In purchasing the camel, the Prophet ﷺ acted as a teacher, demonstrating a valid transaction while safeguarding the rights of all parties — just as he once prayed on the pulpit to teach the prayer[78]. This emphasizes the need to determine whether the sold item is in the seller's possession, held in trust[79], or already under the buyer's control.

Modern Applications

In contemporary trade, a seller's responsibility often ends once goods are delivered to a shipping agent. Items in transit (by sea or air) are treated as held in trust, much like a deposit. Based on this, scholars such as Dr. al-Ṣiddīq al-Dharīr have permitted buyers to resell goods that are already in transit, as they are considered to be effectively possessed[80].

---

[75] See: Al-Qawa'id by Taqi al-Din al-Hisni: Vol. 4, p. 146.
[76] Sahih al-Bukhari: 2133 "Whoever buys food..."
[77] See: Sahih al-Bukhari: 2115.
[78] See Sahih Muslim: 1216.
[79] See: Sahih al-Bukhari: 2115 (The camel in the hands of Ibn Umar).
[80] Majallat Majmaʿ al-Fiqh al-Islami: Issue 6, Vol. 1, p. 488.

Important Point

For possession to take legal effect, it must be actual (ḥaqīqī), not fictional. Some modern writers mistakenly describe certain forms of actual possession as "constructive possession" as though they were symbolic, incomplete, or merely theoretical. This mislabeling obscures important juristic distinctions. Possession through a trustee (yad amīnah) or an authorized agent (wakīl) is actual legal possession. A clear example is the camel that the Prophet ﷺ purchased from 'Umar while it was still under the use of Ibn 'Umar; such possession was real and legally complete.

Key Questions and Answers

- **Q1:** If A sells an item to C (who has not yet taken possession), may A resell it to K?
  A: No. The Prophet ﷺ said: *"A man should not sell over his brother's sale*[81]*."*
- **Q2:** May C sell the item to K before possession?
  A: No. The Prophet ﷺ said: *"Whoever buys food should not sell it until he takes possession of it*[82]*."*
- **Q3:** If the item perishes before possession, who bears the loss?
  A: The seller bears the loss if the goods perish before possession. If the price perishes before delivery, the loss is on the buyer. This follows the Prophet's words:
  "If you sell fruit to your brother and it is struck by blight, you may not take anything from him. Why would you take your brother's wealth unjustly[83]*?"*

Conclusion:

The prohibition on selling goods before possession applies to both food and non-food items. However, one must distinguish between different situations, such as when the goods remain in the seller's store under his control and when the goods are in a trustee's hands. In the latter case, the buyer's possession is regarded as having occurred in a real and legally recognized sense, and the prohibition does not apply.

[81] Sahih Muslim: 3812.
[82] Sahih Al-Bukhari: Hadith: 2133.
[83] Sahih Muslim: 3975.

Section Two: Order Contracts (Salam, Istisnāʿ, and Tawrīd)

Considering whether goods or services are available at the time of agreement, Sharīʿa offers various types of contracts to meet people's differing needs. If the desired item is already in the merchant's possession, the parties may simply conclude a sale. But if the item does not yet exist or is unavailable to him, they may resort to one of the "order contracts" — such as Salam, Istisnāʿ, or Tawrīd — or they may use a Murābaḥa contract. These are described as "order contracts" because the goods are acquired through placing an order for future delivery.

Before proceeding with the main discussion of this section, it is necessary to consider the following point in depth.

Important Point

Proper classification of contracts is crucial. Treating them as one would be akin to treating water as gas by saying, "All liquids are gas." The implication of such conflation is clear: the rulings specific to each type would inevitably be distorted and misapplied. For example, water would not qualify for wuḍū (ablution) if it were misclassified as gas. The same principle applies to contracts. Just as not all liquids are gas, not all contracts are sales. And just as distinguishing between liquids determines their proper use and ruling, so too does proper classification in financial transactions; this ensures that each contract is applied within its correct juristic framework.

Topic 1:
Salam Contract

Salam is a type of Muʿāwaḍāt (exchange) contract in which one party, known as the Muslim (the provider of the salam capital), pays an agreed-upon amount of money upfront. The other party, referred to as the Muslam ilayhi (the recipient of the capital), commits to delivering a specified commodity (Muslam fīhi) at a later date.

The verse of indebtedness (mudāyanah) encompasses all forms of debt, including Salam. The debt that must be recorded is the one that arises when the *muslam ilayhi* receives the advance payment from the *muslim*. Ibn Abbas (RA) reported: *"The Prophet ﷺ came to Medina and the people were paying in advance for fruits to be delivered two or three years later. He said, 'Whoever pays in advance for anything must do so for a specified measure, specified weight, and specified period*[84]*.'"*

Salam is also known as **Salaf**. Al-Kāsānī (Ḥanafī) said: "Salam and Salaf are used with the same meaning[85]." The Shāfiʿī compendium al-Majmūʿ makes the same point[86].

Jurists have differed over whether Salam is simply a type of sale or an independent contract; some adopted an intermediate view — that Salam resembles a sale, but not in all respects[87]. They also debated several related questions: *Is immediate Salam (Salam ḥāl) permissible? May the muslam ilayhi substitute a different commodity before delivery?* These issues will be addressed later.

Salam Not Founded on Temporary Necessity

This section clarifies that Salam is fundamentally different from a sale. Salam is a commercial contract — not a temporary mechanism designed to address a

[84] Sahih Al-Bukhari: Hadith: 2240.
[85] Bada'i' al-Sanai - Al-Kasani: Vol. 7, p. 100.
[86] Al-Majmu' in the Shafi'i school: Vol. 12, p. 177.
[87] Al-Majmu' in the Shafi'i school: Vol. 12, p. 175.

specific urgent need. The legal maxim states: *"Necessity is limited to its extent."* This principle means that when a situation of necessity arises — permitting what would otherwise be forbidden — the allowance extends only to what is required to remove the necessity, and no further.

Unlike an ambulance that may pass through a red signal during an emergency but must stop at a red light under normal circumstances, Salam stands as an established and enduring commercial contract with its own rationale and rules, not based on a temporary or exceptional need.

Subtopic 1: Salam vs Sale

If a merchant already possesses a commodity, the parties may deal through a sale contract. However, if the item does not exist or is unavailable to him, the parties may enter into a Salam contract; the *Muslim* pays upfront for a commodity with defined specifications and quantities, which the Muslam ilayhi will deliver later. Key differences between Salam and Sale include:

1. Salam is an independent contract, not a sale

Ibn Ḥazm stated in al-Muḥallā: *"Salam is not a sale*[88]*."* Al-Qummī (Ḥanafī) and other jurists affirmed the same principle[89]. Ibn Ḥazm further explained: "Not everything exchanged for something else is a sale. A loan is money for money, yet no one calls it a sale[90]." By analogy, even though both Salam and sale involve exchange (māl bi-māl), their legal nature is distinct.

2. A sale may be on a specific item; Salam cannot

In a sale, a specific identified item (*muʿayyan*, e.g., "this car") can be sold. Salam is the opposite: it must relate to an item described by specifications, not to any specific existing item. Ibn Rushd noted in *Bidayat al-Mujtahid*: *"The scholars are agreed that Salam cannot be for a specific item*[91]*."* AAOIFI

[88] Al-Muhalla by Ibn Hazm: Vol. 8, p. 39.
[89] See: Al-Muhalla by Ibn Hazm: Vol. pp. 39-40.
[90] Al-Muhalla by Ibn Hazm: Vol. 8, p. 42.
[91] Bidayat al-Mujtahid: Vol. 2, p. 204.

Sharīʿa Standards affirm: *"Salam is not permitted in respect of any specific item, such as 'this car[92].'"*

3. Ownership at contract time is not required in Salam

In Salam, the *Muslam ilayhi* need not own or even possess the commodity when the contract is signed. This is supported by the report in Sahih al-Bukhari: Companions of the Prophet ﷺ prepaid Nabatean traders for wheat, barley, and raisins without asking whether those traders already had crops[93].

By contrast, in a sale contract, the Prophet ﷺ forbade selling what one does not have: *"Do not sell what you do not have[94]."*

4. The term "sale" cannot be used in Salam

A Salam contract must be concluded using the terms *Salam* or *Salaf*, not the wording of "sale." Al-Zuhayli notes: "Scholars such as Zufar and the Shāfiʿī said: A Salam contract is only valid when the explicit wording of Salam or Salaf is used[95]." This is because, in Salam, the *Muslim* is not acting as a buyer, nor is the *Muslam ilayhi* acting as a seller. This reflects the reality that Salam is not a form of sale but a distinct contract with its own structure and governing principles. This highlights why Ḥakīm ibn Ḥizām's use of the term "sale" was rejected: he said, "I came to the Messenger of Allah ﷺ and said, 'A man comes to me asking me to **sell** something I do not have. I buy it for him from the market and then **sell** it.' The Prophet ﷺ said, '**Do not sell** what you do not have[96].'"

5. Salam and sale cannot be combined

The Prophet ﷺ said: *"A contract of salaf and sale is not permissible[97]."*

Here, "*salaf"* can mean either "loan" (*qarḍ*) or "salam[98]." While both Salam and sale are individually lawful contracts, they cannot be merged. Therefore,

---

[92] AAOIFI Sharīʿa Standards: No, 10. Salam.
[93] Sahih al-Bukhari: 2254.
[94] Sahih Sunan al-Tirmidhi - Grade: Sahih (Albani): Hadith: 1232, Vol. 2, p. 17.
[95] Fiqh al-Islami wa Adillatuh by Al-Zuhayli: Vol. 4, p. 599.
[96] Sahih Sunan al-Tirmidhi - Grade: Sahih (Albani): Hadith: 1232, Vol. 2, p. 17.
[97] Sahih Sunan al-Tirmidhi - Grade: Hasan (Albani): Hadith: 1234, Vol. 2, p. 18.

using the hybrid expression "**Salam Sale**" or *bayʿ al-salam* is incorrect and inconsistent with the Prophetic prohibition against combining distinct contracts into one.

6. Obligations arise differently

In a sale, payment and delivery may be simultaneous or in either order. In Salam, however, the order is fixed:

- The *Muslim* must pay first[99].
- The *Muslam ilayhi* delivers the *Muslam fīhi* only at the agreed future date.

The International Islamic Fiqh Academy rules: "Salam capital must be paid promptly at contract time, though a short deferment of two or three days is tolerated if explicitly agreed, provided it is far shorter than the delivery date[100]."

Subtopic 2: Immediate Salam (Salam Hāl)

A Salam contract addresses situations where other contractual arrangements (including a sale contract) fall short. If a merchant does not yet have the required merchandise but urgently needs cash, he may obtain funds from the *Rab al-Māl* through a Salam contract. Jurists classify Salam into two types based on timing: **immediate** (***Salam ḥāl***) and **deferred** (***Salam muajjal***). However, they differ sharply on whether the immediate form is valid.

We will first review these juristic opinions, then weigh them on the *Mīzān* (scale of analysis), illustrating the importance of Salam with practical examples.

[98] Nayl al-Awtar by Al Showkani: Vol. 10, p. 124.

[99] This is consistent with the hadith: "Whoever pays in advance…" Sahih Al-Bukhari: Hadith: 2240.

[100] International Islamic Fiqh Academy: 1995, Resolution: 85.

1. Opinions on Immediate Salam

Divergence among jurists

- Some permit Salam, whether immediate or deferred.
- Others require a deferred period for validity, rejecting Salam if delivery is to occur immediately.

Al-‘Omrānī explains:
“Deferred Salam is permissible, based on the verse and hadith. We also consider immediate Salam permissible. However, Mālik, Al-Awzāʿī, and Abū Ḥanīfah said that immediate Salam is invalid, and deferment is a condition for validity. They disagreed on the minimum delay: Mālik required at least a fixed period, such as a month; Al-Awzāʿī said three days; some Ḥanafīs said even an hour suffices, while others said three days[101].”

The Mawsūʿah al-Fiqhiyyah summarizes:
“The majority — Ḥanafīs, Mālikīs, and Ḥanbalīs — stipulate that the *muslam fīhi* (commodity) must be deferred. Immediate Salam is not valid. The Shāfiʿīs, however, permit it just as they permit deferred Salam[102].”

Even among the Mālikīs, opinions differ. Al-Qurṭubī states: “Ibn al-ʿArabī said: Some Mālikīs permit immediate Salam, but the sounder view requires a period of delay[103].”

Important Point
When jurists differ on a matter (such as immediate Salam), each undoubtedly expresses his view based on the evidence, indications, or information available to him. However, this does not mean that all positions carry equal weight. Some jurists arrive at the correct understanding, while others do not. Allah Almighty said: *“And We gave understanding of the case to Solomon.”* (al-Anbiyāʾ 21:79). Researchers, therefore, must remain impartial when examining such issues, exercising the fairness expected of a judge. Sound conclusions can only be reached through objectivity and freedom from bias, as

[101] Al-Bayan fi Madhhab Al-Imam Al-Shafi’i by Al-Imrani: Vol. 5, p. 396
[102] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 25, p. 212
[103] Tafsir Al-Qurtubi: Baqarah: 282. See also: Bidayat Al-Mujtahid: Vol. 2, p. 203.

Allah commands: "And when you judge between people, judge with justice." (al-Nisāʾ 4:58).

2. Immediate Salam on the *Mīzān* (Scale)

Based on the above, we now assess Immediate Salam and weigh it on the **Mīzān** — the scale of evaluation.

Practical example:
Suppose a building contractor urgently needs water for his construction. He pays a tanker owner on the condition that water be delivered within an hour. Two rivers are nearby.

Key questions:

- *What contract best suits this transaction — Sale or Salam?*
- *If the Rab al-Māl refuses to lend, what alternative exists?*

Analysis:

Sale contract? Not suitable. The Prophet ﷺ said: *"Muslims are partners in three things: water, pasture, and fire*[104]*."* Scholars agree that flowing water cannot be sold until possessed. Ibn Qudāmah said, "Water running in rivers is never owned and cannot be sold. Only water carried in a vessel becomes owned, by consensus[105]."

Salam contract? Suitable. Salam does not require the muslam ilayhi to own the commodity at the time of the contract. When Ibn Abī Awfā was asked whether those with whom they contracted actually possessed the crops, he replied: "We did not ask them about that."

Therefore, the transaction in the above example can be validly structured as Salam, supporting the opinion that permits immediate Salam.

[104] See: Irwa' al-Ghaleel by Albani: Vol. 6, p. 7.
[105] Al-Sharh al-Kabir - Ibn Qudamah: Vol. 11, pp. 77-88. See also: Al-Mabsut by Al-Sarakhsi: Vol. 23, pp. 164-165.

Arguments of Those Permitting Immediate Salam

- **Definition:** In *Rawdat al-Ṭālibīn,* Salam is defined as "a contract on a described item for an advance price[106]" — a definition that does not stipulate deferment as a condition.
- **No possession requirement:** *Fath al-ʿAzīz* explicitly states possession of the commodity is not necessary at contract time — even for immediate Salam[107].
- **Availability condition:** *Mughni al-Muhtāj* clarifies that immediate Salam is valid only if the item is readily available[108].
- **Ability to deliver:** *Al-Muḥarrar* of Al-Rāfiʿī requires that the Muslam ilayhi be able to deliver when due[109].

In the example discussed above, water is available and can be delivered immediately, thereby satisfying these conditions.

Contemporary Jurists Supporting Salam ḥāl

- **Dr. ʿAbd al-Razzāq al-Hītī:** "The Shāfiʿī view permitting immediate Salam is stronger[110]."
- **Sheikh al-Dīdū al-Shanqīṭī:** "This may be issued as a fatwā due to people's needs and supporting evidence[111]."
- **Sheikh Muḥammad ʿAlī Farkūs:** "The preferred view is permissibility. No evidence requires deferment as a condition, and this supports modern commercial practices. Scholars such as Ibn Taymiyyah and Al-Shawkānī also hold this view[112]."

---

[106] Rawdat al-Talibin by al-Nawawi: Vol. 3, p. 242.
[107] Fath Al-Aziz Sharh Al-Wajeez: Vol. 4, p. 392.
[108] Mughni al-Muhtaj - Al-Shirbini: Vol. 2, p. 138.
[109] Al-Muharrar by Al-Rafi'i: p. 159.
[110] Al-Masarif al-Iislamiah bayn al-Nazariah wa al-Tatbiq - Abdel-Razzaq Rahim Jedi Al-Hiti: p. 537.
[111] Al-kalam 'ala 'Anwa' min al-Buyue (Bahth) Sheikh Muhammad al-Hasan al-Dido al-Shanqiti: pp. 1-3.
[112] Al-Wika' al- Aslam fi Fiqh hadith al-Salam (Bahth) Sheikh Muhammad Ali Farkous: p. 21.

Those Forbidding Immediate Salam

Those who reject Salam ḥāl have no solution for the transaction in the example, since they define Salam as a contract that *inherently* requires deferment.

Zād al-Mustaqniʿ states: "Salam is a contract in which the described item is deferred, while the price is paid in full at contract time[113]."

Ibn Qudāmah rules: "If delivery is made immediately or after a very short period — such as within the day — it is invalid[114]."

Ibn ʿUthaymīn vs Ibn Taymiyyah

- Ibn ʿUthaymīn held immediate Salam invalid, suggesting the sale contract should suffice.
- Ibn Taymiyyah permitted Salam ḥāl, siding with the Shāfiʿī school[115].

However, Ibn ʿUthaymīn himself acknowledged that water cannot be sold until it is owned[116]. Therefore, immediate Salam becomes indispensable in cases such as the example discussed.

Opinions of Ibn Ḥazm and Others

Ibn Ḥazm reports:
"Al-Awzāʿī, along with most Ḥanafīs, Mālikīs, and Ẓāhirīs, differentiated between Sale and Salam. Ibn Qaṣṣār held that as long as the term 'sale' is used, an immediate transaction is permissible; however, if the term 'Salam' is used, deferment becomes a condition. Al-Awzāʿī further specified: 'Any short delay — such as three days or less — renders the transaction a sale rather than a Salam[117].'"

[113] Zaad al-Mustaqni' - al-Hajjawi: p. 111.
[114] Al-Muqni' - Ibn Qudamah: p. 173.
[115] Al-Sharh Al-Mumti - Ibn ʿUthaymīn: Vol, 9, p. 78.
[116] Al-Sharh Al-Mumti - Ibn ʿUthaymīn: Vol, 10, pp. 139-140.
[117] Al-Muhalla - Ibn Hazm: Vol, 8, p. 39.

Moreover, Ibn Ḥazm forbids selling water entirely — even if stored in a tanker[118] — offering no solution for the construction example.

Conclusion — The Importance of Salam in General

The Salam contract plays a vital role in addressing situations that conventional sale contracts cannot adequately handle. Its usefulness extends beyond agricultural finance to urgent needs such as construction supplies, fuel, or other raw materials. For instance, a contract with the owner of a water tanker cannot be structured as a sale — but rather as a Salam contract — since he does not yet own the water to be delivered.

As long as the *muslam ilayhi* can deliver without delay and the commodity is available, Salam ḥāl is a valid and permissible option. In every case, this does not fall under the Prophet's prohibition: *"Do not sell what you do not have*[119]*."* Many classical and contemporary scholars have affirmed its permissibility, underscoring its practicality as a Sharīʿa-compliant mechanism for addressing real-world transactional needs.

Subtopic 3: Replacement of the Muslam Fīhi

In a Salam contract, the *Muslam ilayhi* (the party who received the Salam capital in advance) is obligated to deliver the *Muslam Fīhi* (the specified commodity) at the agreed time. However, the two parties may mutually agree to replace the item with a different commodity. For example, if the muslam ilayhi receives one hundred dirhams for a fixed quantity of wheat to be delivered on a specified date, and both parties later agree to substitute barley instead, would this substitution be valid? This section addresses that question, beginning with the juristic opinions on the replacement of the muslam fīhi.

1. Opinions on Replacement of the Muslam Fīhi

Jurists have differed on whether the subject matter of a Salam contract can be replaced with another commodity. Dr. Al-Siddīq Muḥammad Al-Amīn Al-Dharīr explains:

[118] Al-Muhalla - Ibn Hazm: Vol, 7, p. 488.
[119] Sahih Sunan al-Tirmidhi - Grade: Sahih (Albani): Hadith: 1232, Vol. 2, p. 17.

"Hanafi, Shafiʿi, and Hanbali jurists hold that replacement of the *muslam fīhi* is not permissible before taking possession. The Maliki school, however, permits replacing the *muslam fīhi* with something of a different type, whether before or after the due date, on the condition that the item is not food and that the substitute is delivered immediately, to avoid *faskh dayn bi-dayn* (cancellation of one debt with another)[120]."

According to the **International Islamic Fiqh Academy**, it is permissible — after the due date — to substitute the Salam goods with another commodity, whether of the same type or a different one, provided that the substitute is permissible for Salam and there is no textual evidence prohibiting it[121].

Dr. Siddīq Al-Dharīr also allows replacement under two conditions:

1. The substitute must meet the same conditions as the original Salam commodity.
2. Its market value must not exceed that of the original commodity, preventing compounded profit in a single deal[122].

From the above, it is evident that jurists are divided: some prohibit replacement altogether, while others permit it with certain restrictions.

2. Validity of Replacement

To reconcile the differing juristic opinions, it is necessary to clarify the distinctions between:

- **sale versus replacement**,
- **debt versus obligation**, and
- **whether the substitution constitutes *faskh dayn bi-dayn*** when the substitute is not delivered immediately.

Replacement Does Not Necessarily Constitute a Sale

[120] Majallat Majmaʿ al-Fiqh al-Islami: Issue No. 9, Vol. 1, p. 421. See also: Bada'i' al-Sanai - Al-Kasani: Vol. 7, p. 153 and Al-Majmu' in the Shafi'i school: Vol. 9, p. 331.
[121] International Islamic Fiqh Academy: 1995, Resolution: 85.
[122] Majallat Majmaʿ al-Fiqh al-Islami: Issue 6, Vol. 1, p. 421.

Replacing one commodity with another is not automatically a sale. The Qur'an states:

"He said, 'Would you exchange that which is better for that which is worse?'" (Al-Baqarah: 61)

This *exchange* was not a sale — merely a substitution. Classical jurists, including al-Nawawi, explicitly differentiated between *selling* a Muslam Fīhi and *replacing* it[123].

Practical illustration:
Suppose you call a shop and order bottled water. Before delivery, you change your mind and ask for juice instead. This is not a new sale but simply a replacement of one order with another.

The key question is: *Does this create a new debt (making it faskh dayn bi-dayn)?* This will be analyzed shortly.

Replacement vs Faskh Dayn bi-Dayn

Kifāyat al-Ṭālib al-Rabbānī states:
"Faskh dayn bi-dayn — canceling one debt in exchange for another — is impermissible, such as when a debtor owes 10 dinars to a creditor, and they cancel it in exchange for 10 garments to be delivered within the debt term. Some considered this valid, while others deemed it invalid[124]."

Regardless of their evidential reasoning, this type of arrangement is not classified as "debt-for-debt" (faskh dayn bi-dayn); rather, it constitutes an obligation-for-obligation restructuring.

Ibn al-Qayyim explicitly rejects labeling this as debt-for-debt; instead, he calls it *sāqid bi wājib* — dropping one obligation by replacing it with another[125] — and he permits it, noting that there is no consensus prohibiting it[126].

[123] Al-Majmuʿ by Al-Nawawi: Vol. 9, p. 331.
[124] Kifayat al-Talib al-Rabbani ʿAla Risalat Ibn Abi Zayd al-Qayrawani: Vol. 3, p. 373.
[125] Iʿlam al-Muwaqqiʿin by Ibn al-Qayyim: Vol. 3, pp. 172-173.

Below, we address this issue by explaining how replacement operates and demonstrating that it represents an obligation-for-obligation, not a debt-for-debt, arrangement.

Example (How It Works)

When a Salam contract is executed, the *Muslam ilayhi* carries:

- **a debt** (the capital he received), and
- **an obligation** (to deliver the specified goods).

However, if both parties agree to replace the goods, the **original obligation is extinguished,** and a **new obligation arises** (*Sāqid bi Wājib*[127]), but the debt itself is not simply canceled.

Scholarly Endorsements of Replacement

- **AAOIFI Sharīʿa Standards:** Allow exchange of Muslam Fīhi for other goods (except currency)[128].
- **Ibn Taymiyyah:** "The benefit of replacing an obligation is to drop another obligation, not to transfer ownership[129]."
- **Ibn al-Qayyim:** "Substitution is valid and not equivalent to *kali' bil kali'* (debt-for-debt)[130]."
- **Al-Kharashi (Sharh Mukhtasar Khalil):** "True *faskh* means moving from one obligation to another[131]."

Thus, replacement merely updates the obligation rather than exchanging debts.

---

[126] Iʿlam al-Muwaqqiʿin: Vol. 3, pp. 172-173.

[127] Saqid bi Wajib (An obligation is dropped, and another arises), Saqid bi Saqid (Setoff), and Wajib bi Wajib (Ibtida dayn bi dayn). See: I'lam al-Muwaqqi'in, Vol. 3, p. 172.

[128] AAOIFI Sharīʿa Standards: No, 10. Salam.

[129] Majmu Fatawa ibn Taymiyyah: vol. 29, p. 512.

[130] Hashiyat Ibn Qayyim 'ala Sunan abi Daud: Vol. 9, p. 357.

[131] Sharh Mukhtasar Khalil by Al-Kharashi: Vol. 5, p. 76.

Analogy with Iqālah (Cancellation of Salam)

If both parties agree to cancel a Salam contract (iqālah), the Muslam ilayhi must refund the Salam capital. Al-Nawawī affirms this permissibility, stating: "If the Salam contract is cancelled, the obligation to deliver the goods is dropped, and the Salam capital must be refunded[132]." He further added, "Cancellation of the Salam contract (iqālah) is permissible, because both parties have the right to do so[133]." AAOIFI Sharīʿa Standards also adopt this ruling[134].

This cancellation (iqālah) is neither a new sale nor a debt-for-debt transaction. Rather, it is an obligation-for-obligation: the first obligation (to deliver the goods) is extinguished, and a new one arises (to return the capital).

By analogy, agreeing to **replace** the goods (*the muslam fihi*) with another is similar: the first obligation ends, and a new one begins.

Ibn al-Qayyim articulated this very analogy explicitly:
"If the Muslim takes from the Muslam ilayhi goods or something else, then the original obligation is dropped… just as Salam may be canceled without dispute[135]."

Further Evidence
If a person owes dinars, he may settle his debt with dirhams. This evidence is found in the report from Ibn ʿUmar, who stated: *"He saw no harm in paying dirhams for dinars[136]."*

This narration affirms that when a person owes a debt in one currency (such as dinars) and later agrees to settle it with another (such as dirhams), this is not treated as a sale or currency exchange (ṣarf), but rather as an obligation-for-obligation arrangement.

---

[132] Al-Majmu': Vol. 12, p. 251.
[133] Al-Majmu': Vol. 12, p. 249.
[134] AAOIFI Sharīʿa Standards: No, 10. Salam.
[135] Hashiat Ibn al-Qayyim 'ala Sunan Abi Dawud: Vol. 9, pp. 357-358.
[136] Sahih Sunan Al-Nasa'i: Grade: (Sahih Mawquf) - Albani: Vol. 3, p. 233.

It is also cited, in this context, another narration from Ibn ʿUmar stating: *"We used to sell camels at al-Naqīʿ for dirhams, and take dinars for them, and vice versa*[137]*."* This is not treated as a new sale but as an obligation-for-obligation arrangement[138]. Additional evidences and juristic applications further demonstrate how such arrangements operate. A clear example is when two parties agree that a debtor who owes blood money in camels may instead settle it in dirhams, dinars, or sheep within a year — this is not a debt-for-debt transaction but an obligation-for-obligation arrangement.

Other practical applications of this principle also show up in everyday transactions. For example:

Service-based transaction — Carpenter Example:

If a debtor owing ten dirhams is instead asked to build a box worth ten dirhams, the monetary obligation is extinguished and replaced with a new obligation of work. Some jurists (Malikis) recognize this as valid[139] — it is an obligation-for-obligation, rather than debt-for-debt, because the new obligation (to build a box) arises at the very outset.

To summarize:

The replacement of the *Muslam Fīhi* is supported by major jurists, endorsed by AAOIFI Sharīʿa Standards, and reinforced by analogy with the permissibility of canceling Salam contracts. It does not constitute the prohibited *faskh dayn bi-dayn*. Rather, it terminates one obligation and creates another. In essence, the two parties are not entering into a new sale; they are restructuring their original agreement — a practice firmly recognized as valid under Islamic jurisprudence.

---

[137] He added: "I went to the Prophet and mentioned that to him, and he replied, 'There is no harm in taking them at the current rate so long as you do not separate leaving something still to be settled.'" Jurists have differed regarding the authenticity of this report in its isnād. See: Irwa' al-Ghaleel by Albani: Grade: weak (ḍaʿīf). Vol. 5, p. 173, No. 1326.

[138] The two parties may agree on a price. Abū Ḥanīfah and al-Shāfiʿī permitted settlement at any price, whether higher or lower. See Nayl al-Awṭār by al-Shawkānī, vol. 10, p. 61.

[139] See: Al-Fiqh 'ala al-Madhahib al-Arba'a: ("If a carpenter owes a debt…"), Vol. 2, p. 280.

Topic 2:
Istisnāʿ Contract

Istisnāʿ is not a modern innovation; it is a long-established commercial practice rooted in customary dealings[140]. Far from being limited to small, individual requests, Istisnāʿ is well-suited for large and long-term projects — such as the construction of aircraft, ships, industrial equipment, and factories. It is a contract specifically designed for financing the manufacture or construction of a designated asset, with the flexibility of linking payments to stages of progress without requiring full advance payment.
In everyday commerce, consumers typically purchase ready-made goods from retail outlets such as supermarkets. Those retailers, however, often procure their inventory from manufacturers who produce goods upon request. In such cases, the underlying arrangement may take the form of an Istisnāʿ contract rather than a direct sale of pre-existing goods.

Istisnāʿ: Technical Meaning

Ibn al-Humām defined Istisnāʿ succinctly: *"***Istisnāʿ is a manufacturing order**[141]*."* Based on this, Istisnāʿ is a contract whereby the Mustasniʿ instructs the Sāniʿ to manufacture a specific asset, and the Sāniʿ is obligated to deliver it upon completion. This meaning aligns with the Arabic word "Istisnāʿ," just as "istighfar" means seeking forgiveness, and "istimhal" means seeking respite.

Likewise, Salam (advance payment for goods) has a technical meaning that remains consistent with its linguistic sense. Al-Ramli said, *"Because Salam is derived from receiving the capital, i.e., accelerating it, it must be implemented accordingly*[142]*."*

We now turn to the juristic discussion regarding the nature of the Istisnāʿ contract: Is it classified as a sale? Does ownership of the manufactured item pass to the Mustasniʿ upon conclusion of the contract?

---

[140] One of the indicative words is: istasnaʿa. Ibn Mandhur stated in Lisan al-Arab: "Istasnaʿa means: He ordered that something be manufactured for him."
[141] Fath al-Qadir (Sharh al-Hidayah) by Ibn al-Humam: Vol. 7, p. 107.
[142] Hashiyat Al-Ramli ala' Asna al-Mataleb: Vol. 2, p. 122.

Subtopic 1: Opinions on Istisnāʿ Contract

Jurists vary in how they classify Istisnāʿ. Some view it as a promise, others as a sale, some as a lease, and still others as an independent contract.

Al-Kasani wrote:
"As for its meaning (i.e., the Istisnāʿ contract), the sheikhs differed concerning it. Some said: It is a bilateral promise, not a sale. Others said: It is a sale, but the buyer has an option, and this is the correct opinion[143]*."*

From this, it is evident that scholars disagreed over its legal basis. Some held that Istisnāʿ is not a form of sale.

Dr. Muhammad Sulaiman Al-Ashqar stated that Istisnāʿ is an independent contract, distinct from sale. He wrote:

"The correct definition of the Istisnāʿ contract is that it is a new, independent contract; it is not a promise, a sale, ijāra, or a salam contract, even though it may resemble these forms. It resembles a salam because it involves a contract for a described item. It resembles a sale because the manufacturer provides materials from his own resources for consideration. It resembles ijāra (hiring) in that the work itself is part of the contract's subject matter. This is what the Islamic Fiqh Academy has stated, and it is correct, because a sale does not include any work[144]*."*

Important Point
ʿUrf is an Integral Sharīʿa Principle. However, some mistakenly claim regarding Istisnāʿ that "Islamic law forbids it (citing the Prophetic hadith on selling what one does not have), but ʿurf (custom) permits it." This differentiation between the Sharīʿa and the ʿurf is incorrect. ʿUrf itself is permissible. Allah says: "Enjoin what is ʿurf (good)." (al-Aʿrāf: 199). This is similar to His statement: "They ask you what has been made lawful for them. Say, 'Lawful for you are good things.'" (al-Mā'idah 5:4). Islam does not

[143] Bada'i' al-Sanai': Vol. 6, p. 84.
[144] Buhuth Fiqhiah fi Qadaya Iqtisadiah - Group of Authors: p. 227.

recognize "bad ʿurf"; all good practices fall under ʿurf, while the opposite is "munkar". For this reason, jurists treat **al-ʿUrf** as one of the recognized legal evidences (adilla) that Sharīʿa itself validates, not as an external source that overrides it.

Accordingly, if Istisnāʿ is permitted by a sound ʿurf (good custom), then it is, in fact, commanded, not opposed to the Sharīʿa.

Subtopic 2: Istisnāʿ is not a sale

The Mustasniʿ does not purchase a finished product at the time of the contract; rather, he orders an item that is yet to be manufactured. For this reason, the term "he bought" is not used when someone has something — such as a finger ring — crafted for him after placing an order.
Sahih Muslim reports: "The Prophet ﷺ iṣṭanaʿa a finger ring made for him." (No. 5473). The verb *iṣṭanaʿa* indicates that he acquired it through Istisnāʿ, not through a sale contract.
This confirms that Istisnāʿ is not categorized as a sale.

Dr. Muhammad Sulaiman al-Ashqar explained:
"Istisnāʿ, in juristic terminology, is when a person asks another to make something for him according to specific specifications, using materials provided by the manufacturer, in exchange for an agreed consideration, and the manufacturer accepts[145]*."*
From this, it is clear that Istisnāʿ is an order-based contract, not a sale.
Murshid al-Hiran states:
"Istisnāʿ is an ***order*** *to have something made in a specific way using materials from the manufacturer*[146]*."*

Al-Mawsūʿah al-Fiqhiyyah adds:
"If the Mustasniʿ places an order with the Sāniʿ to manufacture a certain item for a consideration, and the Sāniʿ agrees, then an Istisnāʿ contract is concluded according to the Hanafi school[147]*."*

[145] Buhuth Fiqhiyah fi Qadaya Iqtisadiyah - Group of Authors: p. 222.
[146] Murshid Al-Hayraan - Muhammad Qadri Basha: p. 74.

Broader Scope of Istisnāʿ — Basic Istisnāʿ:

Example:
If someone orders food at a restaurant and specifies how it should be prepared, the transaction falls under Istisnāʿ rulings.

A fatwa from Markaz al-Fatwa states:
"If a person orders food at a restaurant and it is prepared upon order, this is treated as an Istisnāʿ contract. Even when food is ordered by phone for later delivery, payment is not required at the time of the contract — unlike Salam, which requires advance payment. Therefore, food prepared upon order, whether in person or by phone, is governed by Istisnāʿ rules, and this is the correct opinion[148]*."*

This shows that Istisnāʿ applies broadly, even to everyday dealings such as food orders. The next question is: when does the orderer acquire ownership of the item?

Subtopic 3: Ownership of the subject matter

In the food-ordering example, if someone describes his order, agrees on a price, and expects home delivery, does he own the food before it is prepared? The answer is that he owns it only when he takes possession.

Sophisticated example:
If a Mustasniʿ contracts a company to build a hotel for 100 million dirhams over two years, does he own the hotel immediately upon signing the contract? Clearly not — the hotel does not yet exist. Some may argue that ownership begins at contract execution[149], but this is incorrect: an item cannot be owned before it exists.

---

[147] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 3, p. 325.
[148] Markaz al-Fatwa (Group of Scholars): Fatwa No. 301933.
[149] For example, AAOIFI Accounting Standards (2007, Istisnāʿ, p. 376) states: "Ownership of the manufactured item is established for the Mustasniʿ, and ownership of the price is established for the Sāniʿ (the Manufacturer) as soon as the contract is concluded."

Common characteristics with Salam

In a Salam contract, the Muslim does not own the Muslam Fīhi (the described commodity) at the time of signing but only upon taking delivery. Likewise, the Mustasniʿ does not acquire the manufactured item merely by concluding the contract; rather, he acquires it upon taking possession.

The Mustasniʿ and Sāniʿ must both adhere to the agreed terms. If the manufactured item matches the specified requirements, the Mustasniʿ is obliged to accept delivery and pay any outstanding amount. Since the offer and acceptance were concluded at the outset, there is no requirement to renew them at the time of delivery.

Conclusion:

Istisnāʿ is an independent, order-based contract, even though it shares certain features with sale, ijāra, and salam contracts. Ownership of the subject matter arises only upon delivery, not upon signing the contract.

Topic 3:
Tawrīd (Supply Contract)

A supply contract is one of the agreements concluded by order, whether payment is fully or partially deferred. The Islamic Fiqh Academy has stated:

"A supply contract is a contract under which the first party undertakes to deliver a well-defined commodity periodically to another party at specific periods for a certain sum of money, with a total or partial deferred payment[150]."

Tawrīd vs Salam

If the price is paid in full upfront, the contract takes the form of Salam and raises no juristic objections. Since the muslam ilayhi must deliver the item to the Muslim, this shows that Salam incorporates the element of Tawrīd. However, Tawrīd remains a distinct contract because it applies in situations where Salam cannot be executed — such as when no advance payment is made.

Tawrīd vs Istisnāʿ

If the ordered commodity requires manufacturing, the arrangement is treated as Istisnāʿ. If it only needs delivery without any manufacturing, it is treated as Tawrīd. A combined form of Istisnāʿ and Tawrīd appears in a restaurant order, where the food must first be prepared and then delivered.

Tawrīd vs Sale

If the goods are already available, the contract is classified as a sale — regardless of whether delivery occurs on the spot (majlis al-ʿaqd) or is deferred, as in the case where the Prophet ﷺ purchased the camel from Jābir and took delivery later in Madinah. **Tawrīd**, however, is distinct: it is used precisely when the goods are not available at the time of the contract.

Because both counter-values are absent at the moment of a supply contract, jurists have differed regarding its validity — a dispute known as *Taʾjīl al-*

[150] International Islamic Fiqh Academy: 2000, Resolution: 107.

Badalayn. The core of this disagreement lies in determining when ownership of the commodity or the price is deemed to transfer. Furthermore, some jurists do not distinguish between an initial debt-for-debt transaction (which is impermissible) and a case in which both counter-values are deferred (*Taʾjīl al-Badalayn*), which contributes to further confusion in their classification.

Subtopic 1: Opinions on Deferment and Initial Debt

At the outset, it is important to note that deferring payment or delivery does not necessarily create debt. The term *ta'jīl* (deferral) or *ajal* (term) does not automatically mean "debt." In the Qur'an, Allah mentions *dayn* (debt) and *ajal* (term) separately:

"O you who have believed, when you enter into a *tadāyun* — a transaction of mutual debt — *and one of the debts is deferred to a fixed term,* then put it in writing." (Al-Baqarah: 282)

Here, **debt** is one matter, while the fixed **term** is another. In another verse, Allah says: "And He has subjected the sun and the moon, each running [its course] for a specified term." (Luqman: 29)

Clearly, *ajal musamman* (specified term) here has no connection to debt. From this, we understand that debt and deferment are distinct concepts. Some jurists recognized this distinction, while others did not.

The First Opinion: Differentiation and Permissibility

Jurists who hold this view distinguish between an initial debt-for-debt arrangement and the mere deferment of both counter-values. They permit the supply contract when both counter-values are deferred and do not consider it to fall under the prohibition of debt-for-debt. As stated by Sālim ibn ʿAbdullāh ibn ʿUmar, one of the jurists of Medina:

"We (customers) used to enter into a contract with a merchant to receive a certain amount of meat daily, and the price would be paid when we received our stipend. *The contract was valid, although both counter-values*

were deferred. No one considered this to be debt-for-debt, nor did anyone see any objection to it[151]*."*

This clearly demonstrates that an initial debt-for-debt is different from the deferment of the two counter-values. According to this opinion, *Tawrīd*, *istijrar*, and *Istisnāʿ* contracts are valid and raise no issue, as neither party owes the other a debt before payment or delivery takes place.

The benefit of this arrangement

Supply contracts help merchants (suppliers) by providing them with reliable foresight into customer demand. This allows them to prepare the required quantities in advance, allocate resources efficiently, and minimize both waste and shortages. Likewise, supply contracts benefit customers by offering stable prices and a dependable source of goods. This structure enables customers to receive goods or services first and pay later, thereby enhancing their cash flow and budgeting flexibility — a benefit that supports overall economic activity.

The Second Opinion: No Differentiation, No Permission

Jurists of this view make no distinction between the two concepts and prohibit supply contracts if both counter-values are deferred. Ibn Hubayra said:

"They agreed that the kali' bil kali' (initial debt-for-debt) is invalid. It is like when a man enters into a Salam contract to deliver ten described garments at a future date for a deferred price, whether the terms are equal or not[152]*."*

From this statement:

- Scholars agree that *kali' bil kali'* (initial debt-for-debt) is invalid — a correct position.
- Salam with a deferred price is invalid — also correct, because Salam requires advance payment.

[151] Al Mudawwanah Al Kubraa - Malik ibn Anas: Vol. 10, p. 125.

[152] Ikhtilaf al-Aimmah al-Ulama - Ibn Hubaira: Vol. 1, p. 407. Dr. Wahba Al-Zuhayli stated in his book 'Bai al-Dayn': "Sharīʿa scholars have prohibited what is called 'Ibtida' dayn bi dayn'. That is, the commodity and price are deferred until a specified date." p. 48.

- However, when both the payment and the commodity are deferred, no actual debt has yet arisen — and this is precisely the point under discussion.

The Third Opinion: No Differentiation but Permissible

Jurists of this opinion do not distinguish between the two concepts, yet they still permit the transaction if both counter-values are deferred.

In other words, they agree with the *first opinion* in permitting such contracts, while agreeing with the *second opinion* in refusing to distinguish between initial debt-for-debt and deferment of counter-values.

Al-Kharashi said when commenting on prohibited transactions:
"Deferring the capital of Salam as part of an initial debt-for-debt is treated leniently, because it is permissible to defer it for two or three days, even with an explicit condition[153]*."*

Thus, they allow deferment even without clarifying the distinction between the two concepts. Many contemporary jurists have fallen into this same conflation: they fail to differentiate between initial debt-for-debt and deferment of both counter-values, yet they still rule permissibly.

Sheikh Al-Siddīq Al-Dharīr said regarding a supply contract where both counter-values are deferred:

"The claim that there is no benefit in an initial debt-for-debt is unacceptable. The buyer acquires ownership of the item by contract, and the seller acquires ownership of the price. If delivery is deferred, the benefits of the supply contract are not lost. A wise person does not enter into such a contract without benefit. Merchants may resort to this type of transaction to secure sales[154]*."*

[153] Sharh Mukhtasar Khalil by Al-Kharashi: Vol. 5, p. 170.
[154] Al-Gharar Wa Atharuh fi al-Uqud - Sheikh Al-Siddiq Al-Dhareer: p. 334.

From this, it appears Sheikh Al-Dharīr considers initial debt-for-debt beneficial, conflating it with deferment of counter-values. This raises several questions:

- How can the buyer be said to own an item before taking possession, particularly if it does not yet exist?
- How can the seller be said to own a price he has not yet received?
- Does any debt arise before either party takes possession of the consideration?

Nevertheless, despite these questions and the misconceptions underlying this opinion, its proponents still consider the supply contract permissible when both counter-values are deferred.

Below, we address this issue and provide practical examples to remove any ambiguity surrounding it. But first:

Important Point

Differences among the great jurists were never rooted in carelessness or inconsistency. Rather, they reflect sincere effort, continuous inquiry, and a readiness to revise previous views in light of what their ijtihād led them to judge as stronger at the time. This is evident in the well-known changes in al-Shāfiʿī's positions (qadīm and jadīd), as well as in the different narrations from Aḥmad and Mālik, and in the varying transmissions within the Ḥanafī school. Their shared principle is also well known: if a statement contradicts sound textual evidence, it should be set aside in favour of that evidence. Allah Almighty says: *"And they are those who do not persist in what they have done while they know."* (Āl ʿImrān: 135). Shifts in opinion resemble moving from a treatment once thought effective to one that is genuinely beneficial and free of harm — and it is the responsibility of contemporary researchers to weigh the subject matter fairly and reach conclusions with integrity.

Subtopic 2: No Initial Debt Before Possession

When a supply contract is signed, neither party immediately owes the other a debt. No debt arises until either the price is paid or the goods are delivered.

A practical example: the water company.

Suppose you sign a contract with a water supplier. Before using any water, can the company demand immediate payment as if you already owe a debt? Clearly not — you have consumed nothing. Once you turn on the tap and use water, however, you owe a debt equal to what you used. The water meter records the consumption, and this recorded amount is the debt that must be settled — the kind of debt Allah commands to document (Al-Baqarah: 282).

Thus, the contract itself does not generate debt at signing. Debt arises only when water is actually consumed. The company does not record a debt owed by you, nor do you record one owed by them, until performance occurs. Therefore, initial debt-for-debt is not present when both counter-values are deferred at the contract stage.

This aligns with the first opinion: Sālim ibn ʿAbdullāh ibn ʿUmar related that they would agree to take a fixed amount of meat daily and pay later, yet no one regarded this as a prohibited debt-for-debt arrangement[155].

Contemporary Core Opinion on Tawrīd

Dr. ʿAbd al-Wahhāb Abū Sulaymān is among the contemporary jurists who clearly distinguished between initial debt-for-debt and the deferment of counter-values, and who therefore permitted supply contracts. He said:

"The supply contract is not a sale of debt for debt; it is limited to agreement and promise, and does not go beyond that. Therefore, the contract remains permissible[156]."

[155] Al Mudawwanah Al Kubraa - Malik ibn Anas: Vol. 10, p. 125.

[156] Al-Mu'amalat al-Maliyah Asalah wa Mu'asarah by Al-Dubyan: Vol. 8, p. 491

Jaʿālah as a Standard:
The permissibility of *Istisnāʿ* and *Tawrīd* contracts when both counter-values are deferred parallels the structure of Jaʿālah.

In Jaʿālah, neither counter-value is delivered immediately, and the Qur'an itself records this model: *"And whoever brings it shall have a camel-load, and I guarantee this."* (Yusuf: 72)

Moreover, Istisnāʿ, Tawrīd, and Jaʿālah — a task undertaken for promised compensation — are explicitly recognized as valid **commutative (muʿāwaḍa) contracts**.

Al-Mawsūʿah al-Fiqhiyyah states: "Ijāra and Jaʿālah are considered *muʿāwaḍa* contracts between two parties involving compensation[157]."
AAOIFI Sharīʿa Standards affirm: "Jaʿālah is a commutative contract. It must specify the required task and the amount of compensation[158]."

Therefore, Jaʿālah provides an analogical benchmark for Istisnāʿ and Tawrīd when both counter-values are deferred.

Conclusion
The supply contract is highly relevant in modern finance and commerce, widely applied by governments, institutions, companies, and individuals, and suited to all types of commodities. It naturally involves a set period for fulfillment, with representatives signing on behalf of the parties involved. No debt arises for either party until actual delivery or payment takes place. Just as in a sales contract, it cannot be said that the buyer owes a debt before receiving the goods; the same principle applies equally to the supply contract.

[157] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 5, p. 230.
[158] AAOIFI Sharīʿa Standards: No, 15. Ju'alah.

Topic 4:
Murābaḥa upon Order

Murābaḥa is a type of financial transaction based on a sale contract in which the seller discloses the cost and adds an agreed profit margin, with payment commonly deferred in installments.

Direct Murābaḥa vs Murābaḥa upon Order

- **Direct Murābaḥa:** When a merchant sells goods from his own stock at cost plus an agreed profit. As stated in *Mughni al-Muhtaj*:
  "Murābaḥa contract is valid, based on the general permissibility of sale, where someone sells what he bought for one hundred dirhams to another for two hundred dirhams, both being fully aware of the transaction[159]."
- **Murābaḥa upon Order:** When a customer asks a merchant (or bank) to purchase a specific commodity, promising to buy it later at cost plus a profit margin.

This arrangement raises important juristic issues regarding (1) sale after possession, (2) the binding nature of promises, and (3) the moral weight of fulfilling such promises.

Subtopic 1: Sale after Possession

Murābaḥa upon order differs from Salam, Istisnāʿ, and Tawrīd contracts because the customer promises to purchase a specific, available commodity in the market. After the merchant acquires it, the sale contract between the two parties is then executed.

[159] Mughni al-Muhtaj - Al-Shirbini: Vol. 2, p. 102.

Juristic evidence:

Imam al-Shafiʿi said:
"If a man shows another a commodity and says, 'Buy this and I will purchase it from you at cost plus such-and-such profit,' and the man buys it, then the transaction is permissible[160]."

Ibn al-Qayyim stated that this arrangement is permissible as long as the seller first takes possession of the commodity, and he may stipulate an option to return it if the promissor fails to fulfill his promise[161].

Sheikh Ibn Baz clarified:
"A promise to buy is not a sale contract. If a merchant purchases an item at the customer's request, there is nothing wrong with reselling it after taking possession. This does not fall under the hadith: *'Do not sell what you do not have*[162]*.* "

Subtopic 2: Opinions on Fulfilling the Promise

Jurists have three views on whether a promise to purchase is binding:

1. Not legally binding (Shafiʿi view):
The orderer may choose whether to complete the purchase. ***Al-Umm*:** "If he wishes, he may buy it; if he wishes, he may abandon it[163]."

2. Binding on the promisor (majority contemporary view):
If the orderer breaks his promise after the seller has incurred expense, he must compensate for actual losses. **Islamic Fiqh Academy Resolution:** "A unilateral promise is morally binding, and becomes legally binding if the

[160] Al-Umm - Imam al Shafi'i: Vol. 4, p. 75.
[161] I'lam al-Muwaqqi'in - Ibn al-Qayyim: Vol. 5, p. 430.
[162] Majmu Fatawa wa Maqalat Mutanawwa'ah - Syeikh Abdul Aziz Bin Baz: Vol. 19, p. 68.
[163] Al-Umm - Imam al Shafi'i: Vol. 4, p. 75.

promisee has incurred costs in reliance upon it. It must then be fulfilled or compensation paid[164]."

3. Binding on both parties (Islamic Banking Conference, Dubai):
Both the customer and the bank must honor their promises once the terms are set. **Conference Resolution:** "The transaction includes mutual promises from both sides, and these are binding[165]."

Subtopic 3: Promise on the Mīzān (Scale)

Fulfilling promises is a moral obligation ordained in the Qur'an and Sunnah.
Qur'an:

- *"Fulfill the covenant; indeed, the covenant will be held to account."* (Al-Isrāʾ: 34)
- *"O you who believe, why do you say what you do not do?"* (Saff: 2)
- Allah praised those who fulfill their promises, as in His statement: "Indeed, he [Ishmael] was true to his promise." (Maryam: 54)

Hadith:
"The signs of a hypocrite are three: when he speaks, he lies; when he makes a promise, he breaks it; and when he is entrusted, he betrays[166]."

Murābaḥa is a trust-based contract. Transparency in cost and profit is required, and dishonesty gives the buyer the right to annul any excess price. Ibn Abd al-Barr (*al-Kafi*): *"If he lies in Murābaḥa, the buyer may either keep the item at the full price or return it[167]."*

Neither party may break the promise, as Qur'anic and hadith texts apply equally to both sides. This is reflected in the resolutions of the Dubai[168] and Kuwait[169] conferences:

---

[164] International Islamic Fiqh Academy: 1995, Resolution Nos: 40-41.
[165] First Islamic Banking Conference – Dubai: 1979.
[166] Sahih al-Bukhari: Hadith: 33.
[167] Al-Kafi by Ibn 'Abd al-Barr: p. 705.
[168] first Islamic Banking Conference – Dubai: 1979.
[169] Second Islamic Banking Conference - Kuwait: 1983.

- The promise is binding on both the customer and the seller.
- This safeguards financial stability, prevents disputes, and avoids losses, as Dr. Kamal Tawfiq Hattab emphasized[170].

Promise vs Sale: A Juristic Distinction

There is a fundamental difference between a promise and a sale contract. A key legal distinction is that a promise does **not** fall under the Prophet's prohibition: *"Do not sell what you do not have."* Accordingly, a promise carries its own legal implications: the statement *"I will sell to you"* or *"I will buy it from you"* is a commitment that one is religiously bound to fulfill, whereas signing a sale contract on the spot for an unavailable item is prohibited. **Likewise, a sale has its own distinct implications.** No debt arises at the promise stage; a debt is only established once the commodity has been purchased, possessed, and then resold. Until possession takes place, neither party may record any debt.

Sheikh Ibn Baz: *"A promise to buy is not a sale; it is only a commitment[171]."*

This applies even to a bilateral promise involving items that must be exchanged hand-to-hand in a sale contract — such as in ṣarf — because such a promise does not constitute a sale. Once the sale contract is actually concluded, the hand-to-hand requirement must then be fulfilled.

Ibn Hazm (*al-Muhalla*): *"A promise to exchange gold, silver, or currency is permissible because a promise is not a sale[172]."*

This distinction makes the divergence between promise and sale unmistakable and underscores the significance of the Murābaḥa contract.

Conclusion

- Murābaḥa upon order proceeds in two distinct stages:
  1. **The promise stage**, in which the buyer commits to purchase.
  2. **The sale stage** (Murābaḥa), in which the actual contract is concluded.
- The seller must take **possession** of the goods before selling them to the buyer.

[170] Majallat Jami'at Mu'tah - Dr. Kamal Tawfiq: Volume 15, Issue 1, p. 244.
[171] Majmu Fatawa wa Maqalat Mutanawwa'ah - Syeikh Abdul Aziz Bin Baz: Vol. 19, p. 68.
[172] Al-Muhalla - Ibn Hazm: Vol. 7, p. 465.

- **Debt** arises only after possession; it does not arise during the promise stage.
- **Fulfilling the promise** is binding on both parties, as violating it would contradict Islamic ethical principles and undermine trust in financial dealings.

Chapter Three:
Hiba (Gifts)

- **Section One: Gift and the Debt It Creates**
- **Section Two: Revocation of Gifts**
- **Section Three: End-of-Service Benefits**

Section One:
Gift and the Debt It Creates

In Arabic, the term tabarruʿ has a broad scope that includes donations (such as gifts) and voluntary services. ***Tabarruʿāt*** contribute to social cohesion by strengthening communal bonds, just as they contribute to economic development by supporting essential services.

Islam strongly encourages tabarruʿ activities, as seen in the major voluntary efforts undertaken by Dhul Qarnayn. Educating people is also considered a form of soft infrastructure, and it may be carried out through *tabarruʿ* (voluntary service), as exemplified by the Prophets in the verse: **"And I do not ask you for it any payment. My payment is only from the Lord of the worlds."** (al-Shuʿarāʾ). This chapter, however, does not address voluntary services; it focuses specifically on gifts and donations.

Allah Almighty said:

- *"Never will you attain the good [reward] until you spend [in the way of Allah] from that which you love."* (Al-Isrāʾ: 92)
- *"And [the righteous] give wealth, in spite of love for it."* (Al-Baqarah: 177).
- *"But if they, of their own good pleasure, remit any part of it to you, then take it in satisfaction and ease."* (al-Nisaʾ: 4).

Hadith evidence

The Prophet (peace be upon him) would give generously from his wealth, to the point that even his opponents remarked that he feared no poverty. Numerous ḥadīths highlight this virtue; among them is the report narrated by Jābir:

"When I arrived in Medina, I brought the camel to the Prophet (peace be upon him), and he gave me an ounce more, then he gave the camel to me as a gift[173]."

[173] Sahih Muslim: No, 4103.

The Companions of the Prophet (al-Ṣaḥābah) embodied this example, to the extent that some of them gifted valuable assets — including entire farms — seeking reward and nearness to Allah.

From a juristic perspective, a gift is a form of donation distinct from commutative contracts (such as sales). It represents a gratuitous transfer of property without any consideration, whereas a commutative contract entails a mutual exchange in which both parties receive a corresponding benefit.
Imam al-Nawawi states in *al-Majmuʿ*: "The meanings of a gift, a present, and charity are closely related; all signify the transfer of ownership during life without consideration[174]."

Several issues related to gifts arise — foremost among them is whether ownership is established by the contract itself or only upon taking possession[175]. The discussion begins with the question of how a debt may originate from a gift.

Topic 1: Debt Arising from a Gift (Gift Debt)

A gift (hiba) is a financial transaction and therefore falls under the general principle of tadāyun (mutual indebtedness) mentioned in the Qur'anic Debt Verse (Al-Baqarah: 282).

Previously, we discussed how debt can arise when one takes possession of goods or payment (the price). We now turn to another source of liability: the debt that arises from a gift, completing the balance of tadāyun (mutual indebtedness).

Practical implication:
When a person makes a binding gift (hiba), he becomes a debtor to the recipient by virtue of the gift contract.

[174] Al-Majmu': Vol. 16, p. 340.
[175] See: Al-Fiqh al-Islami wa Adillatuh by Al-Zuhayli: "In conclusion, the non-Malikis believe that the gift is owned by taking possession, not by contract, but according to the Malikis: it is owned by contract." Vol. 5, p. 21.

Once the gift is delivered, the recipient, by taking possession, is in turn indebted to the giver in a corresponding sense. Thus, the debt arising from possession and the debt resulting from the gift offset one another, completing the framework of **tadāyun**.

For example, suppose someone gives ten dirhams as a gift, and the recipient takes possession. As previously noted, taking possession itself creates a debt. But what balances that debt to maintain reciprocity? The answer: a corresponding debt arises at the outset from the act of giving itself. These two debts — the debt from the gift and the debt from possession — cancel each other out.

Several legal issues illustrate how a debt arises from a gift:

- Gift of a debt to a debtor
- The statement of the Prophet (peace be upon him): "The guarantor is a debtor[176]."
- The dowry, which is a debt owed by the husband to the wife
- The transaction known as *Daʿ wa Taʿjjal*

We will consider these issues in turn.

Subtopic 1: Gift of a Debt to a Debtor

Suppose someone owes another person a sum of money (for example, 100 dinars) and then gifts that very debt to him. Jurists describe this as a "gift of a debt to its debtor," and they have permitted it.

Al-Jaziri records:
"The Hanafis said: The gift of a debt is permissible. If the creditor gives the debt to the debtor, it is valid… The Malikis said: The gift of a debt to the debtor is valid… The Shafiʿis said: The gift of a debt to the debtor is ibrāʾ (waiving)… The Hanbalis said: A gift of a debt is valid for the debtor; if he gifts it or waives it, it is valid whether the debt is known or unknown[177]."

[176] Sahih Sunan Abi Da'ud: Grade: Sahih (Albani): Vol. 2, p. 389.
[177] Al-Fiqh Ala Al-Madhahib Al-Arba'a by Al-Jaziri: Vol. 3, pp. 265-267.

This shows a consensus: if the creditor gifts the debt to the debtor, it is valid. In essence, the debt is extinguished. But what debt corresponds to the cancelled debt to keep the scales balanced?

It is the debt that arises from the gift itself. Thus, the two debts — the original debt and the "gift debt" — cancel each other out by set-off.

Gift of a debt to someone other than the debtor

Scholars differ on this case. Al-Jaziri notes from the Shafiʿis:

"As for a gift of a debt to someone other than the debtor, there is a difference of opinion: some say it is valid, others say it is invalid[178]*."*

The foregoing indicates that:

- A gift of a debt **to the debtor** is unanimously valid.
- A gift of a debt **to another person** is disputed.

Practical difference:

- In the first case, the debt is extinguished directly between the two parties.
- In the second case, a third party is involved, and the debt does not automatically drop. This concept will be explained further in the section on Ḥawāla (transfer), where such a gift operates through the mechanism of transfer.

Subtopic 2: "The Guarantor Is a Debtor"

The Messenger of Allah (peace be upon him) said:

"Debts must be paid, and the guarantor is a debtor (Ghārim)[179]*."*

This refers to a *ḥamīl* (guarantor) who pays voluntarily, without recourse against the original debtor. The Prophet also said:

"I am a guarantor (ḥamīl) of a house on the outskirts of Paradise for one who believes in me, accepts Islam, and emigrates[180]*."*

[178] Al-Fiqh Ala Al-Madhahib Al-Arba'a – Al-Jaziri: Vol. 3, p. 267.
[179] Sahih Sunan Abi Da'ud: Grade: Sahih (Albani): Vol. 2, p. 389.
[180] Sahih Sunan Al-Nasa'i: Grade: Sahih (Albani): Vol. 2, p. 380.

The term *Ghārim* (debtor) refers to those eligible for zakāt as mentioned in the Qur'an (al-Ghārimūn). Abu Bakr al-Jassas said: *"The scholars did not differ that al-Ghārimūn are the debtors*[181]*."*

Imam al-Shafiʿi likewise affirmed: *"The Ghārimūn are everyone who owes a debt*[182]*."*

Thus, the guarantor becomes a debtor as soon as he signs the contract. This **debt arises from a gift**, as he undertakes to pay without compensation. Jurists affirmed this principle, as the following statements show.

Juristic statements:

- **Al-Māzirī:** *"As for ḥamāla (bearing a debt), it is a gift to the debtor*[183]*."*
- **Al-Qarāfī:** *"The ḥamāla is governed by the rules of gifts*[184]*."*

Accounting example:

If a company assumes a debt without intending to recover it from the original debtor, accountants record this as a liability. The company becomes one of the *Ghārimūn*, exactly as the Prophet said: "The guarantor is a debtor."

Illustrative case (at a restaurant):

You meet a relative at a restaurant and offer to pay his bill after he finishes eating. Do you become a debtor?

Yes. You are now one of the *Ghārimūn* because you assumed a debt you must pay. If you pay, the debt ends. Here, two debts exist:

1. The customer's debt to the restaurant.
2. Your "gift debt" to the customer.

When you pay, both debts are extinguished because you are paying on his behalf (the customer).

[181] Ahkam Al-Qur'an – Al-Jassas: Vol. 4, p. 327.
[182] Al-Umm of Imam al Shafi'i: Vol. 3, p. 213.
[183] Sharh al-Talqin fi al-Fiqh al-Maliki by Al-Maziri: Vol. 3, p. 156.
[184] Al-Dhakhira fi Furu' al-Malikiyah – Al-Qarafi: Vol.9, p. 209.

Hadith examples:

Jabir ibn ʿAbdullah reported:
"A man who owed two dinars died. The Prophet ﷺ said, 'Pray over your companion.' Abu Qatada said: 'I will pay them, O Messenger of Allah.' So, the Prophet prayed over him[185]."

Ibn ʿAbbas reported:
"The Prophet ﷺ assumed a debt of ten dinars on behalf of a man pursued by his creditor, then paid it off for him[186]."

In conclusion, the guarantor becomes a debtor (ghārim) the moment he accepts the obligation. This debt is a gift debt; once the guarantor pays, both debts — the gift debt and the original debt — are extinguished, since he pays on behalf of the original debtor.

Subtopic 3: The Dowry as a Gift

We have seen that a gift creates a debt from the donor to the recipient. The *ḥamāla* is a clear example: the guarantor gives money without compensation. Likewise, the dowry (*ṣadāq*) is described as a *niḥla* (gift). Allah says:

"Give the women their dowries as a niḥla (gift)" (al-Nisaʾ: 4).

Abu Bakr al-Jassas said:
*"**Niḥla** is in origin a gift, because the husband acquires nothing in return, and because the woman retains control over herself after marriage, just as before it[187]."*

Al-Raghib al-Asfahani wrote:
*"**Niḥla** is a gift… The dowry is given as a niḥla (gift)[188]."*

---

[185] Sahih Sunan Abi Da'ud: Grade: Sahih (Albani): Vol. 2, p. 389. Jabir Said: "Then, when Allah granted His Messenger wealth, he said: ' I am closer to every believer than himself. Whoever leaves behind a debt, I will pay it, and whoever leaves behind wealth, it is for his heirs."
[186] Irwa al-Ghalil - Albani: Grade: Sahih. Vol.5, p. 246.
[187] Ahkam Al-Qur'an – Abu Bakar Al-Jassas: Vol.2, p. 350.

Jurists Affirm the Dowry as a Debt

- **Ibn Qudamah:** *"The dowry is a debt owed by the husband to the wife, and its ruling is the same as the ruling on debts*[189]*."*
- **Al-Hattab** (*Mawāhib al-Jalīl*): *"…because the dowry is a debt like all other debts*[190]*."*
- **Al-Mawardi:** *"…because her dowry is a debt*[191]*."*
- **Dr. Noura al-Mutlaq:** *"The deferred dowry is a debt owed by the husband. If he dies before paying it, it must be paid from his estate. Its ruling is the same as that of other debts*[192]*."*

Thus, upon conclusion of the marriage contract, the husband becomes a debtor. This debt originates from a gift (*niḥla*), since it is an obligation without compensation.

Important Point

In the context of dowry and obligations arising from *tabarruʿ*, two matters require careful consideration:

First: *Tabarruʿ* (a gratuitous transfer or gift) carries a strong implication of obligation and establishes a debt immediately upon declaration. Likewise, the term *niḥlah* does not imply that giving the dowry is optional; rather, it is an obligation (*farīḍah*) upon the husband as soon as the marriage contract is concluded.

Second: The dowry is not a price for the woman nor compensation for enjoyment; it becomes due to the wife immediately upon the conclusion of the contract, even in cases such as the husband's death or a divorce that follows immediately thereafter.

---

[188] Mufradat Alfadh al-Qur'an - Al-Raghib Al-Asfahani: Harf Nun – Nahala.
[189] Al-Mughni by Ibn Qudamah: Vol. 4, p. 277.
[190] Mawahib Al-Jalil by Al-Hattab Al-Ra'ini: Vol. 5, p. 181.
[191] Al-Hawi Al-Kabir by Al-Mawardi: Vol. 9, p. 502.
[192] Majalat al-Buhuth al-'Islamia: Vol. 83, p. 296.

Subtopic 4: *Daʿ wa Taʿjjal* Involves a Gift

Daʿ wa Taʿjjal means the creditor agrees to reduce the amount if the debtor pays early[193].

Example:
A debtor owes 100,000 dirhams. They agree to settle for 90,000 immediately. The debtor pays, and the debt ends.

How does this work?

- Waiving part of a debt is a *hiba* (gift).
- The creditor owes a "gift debt" of 10,000 to the debtor, while the debtor owes 10,000 to the creditor. These cancel out by set-off.
- When the debtor pays 90,000, the creditor — by taking possession — likewise becomes a debtor (possession debt), which offsets the debtor's remaining liability.

Tadāyun balance:

- Debt 1: 90,000 owed by debtor to creditor.
- Debt 2: 90,000 owed by creditor to debtor (possession debt). These two debts cancel each other out.
- Debt 3: 10,000 owed by debtor to creditor.
- Debt 4: 10,000 owed by creditor to debtor (gift debt). These two debts cancel each other out.

Because these debts are balanced and cancel each other out, the mechanism supports the permissibility of *Daʿ wa Taʿjjal*.

Juristic evidence:
Ibn Abbas said in *Musannaf ʿAbd al-Razzaq*: *"There is no harm if a creditor says: 'Pay me earlier and I will reduce the amount*[194]*.'"*

[193] Majalat al-Sharīʿa Wa-Al-Dirasat Al-Islamia - Kuwait: Muhammad Abd al-Ghaffar al-Sharif: Vol. 13, Issue 34, p. 135.
[194] Musannaf of Abd al-Razzaq: Vol. 8, p. 72.

The Saudi Permanent Ifta Committee: *"Daʿ wa Taʿjjal is permissible. This is the view of Ibn Taymiyyah and Ibn al-Qayyim and is narrated from Imam Ahmad*[195]*."*

The Islamic Fiqh Academy: *"Discounting a deferred debt for early payment is permissible and is not riba if not pre-agreed*[196]*."*

Ibn al-Qayyim explained:
"Riba involves increasing both the time and the amount, harming the debtor. Daʿ wa Taʿjjal benefits both parties: the debtor's burden is eased, and the creditor is paid sooner. This is the opposite of riba in both form and meaning[197]*."*

In summary, *Daʿ wa Taʿjjal* is permissible and entails *hiba* (gift); without it, there would be an outstanding unsettled debt.

Subtopic 5: *Hibat al-Thawāb* and Its Applications

A normal gift (*hiba*) is a transfer of property made without expecting anything in return. However, sometimes a gift is made with the expectation of some form of reward from the recipient (*Mawhūb lahu*). This is called *Hibat al-Thawāb* ("a gift for reward").

This type of gift has practical applications in debt settlement. For example, in the issue of *Daʿ wa Taʿajjal* (forgive part of a debt in exchange for early payment), the transaction is technically a gift, but not a *normal* gift — it falls under *Hibat al-Thawāb*. Likewise, a gift that is contingent on installment payments is also not an ordinary *hiba* but rather *Hibat al-Thawāb*, because it is given with an anticipated benefit.

A process involving three parties

[195] Fatawa Al-Lajna al-Da'imah: Vol. 13, p. 168.
[196] International Islamic Fiqh Academy: 1992, Resolution: 64. See also: AAOIFI Sharīʿa standards (No. 16).
[197] Ighatht al-Lahfan by Ibn al-Qayyim: p. 683.

One useful application of *Hibat al-Thawāb* is the clearing of debts when three (or more) parties are involved, each holding a claim against another.

Example 1:

- **A owes B** one hundred dirhams.
- **C owes A** one hundred dirhams.

This setup can be approached in two ways:

1. Gift of debt to the debtor
Each creditor could simply forgive his own debtor — B forgives A, and A forgives C. This is a straightforward gift of debt to the debtor.

***2. Hibat al-Thawāb* arrangement**
But suppose **B wants the debt of C (a third party) to be dropped**. He could say to A (who is C's creditor): *"Remove C's debt, and I will cancel your debt."*

This is not an ordinary gift — it is *Hibat al-Thawāb*, since each party is forgiving a debt in anticipation of reciprocal benefit. If A agrees, both debts are extinguished.

Analysis of the offset

a) The debt owed **by A to C** arises from the first gift, while C originally owed A. These cancel each other out through set-off (i.e., A's debt to C offset against C's debt to A).

b) The debt owed **by B to A** arises from the second gift, while A originally owed B. These also cancel each other out through set-off.

Example 2: Three interlinked debts

- **A owes B** one hundred dirhams.
- **C owes A** one hundred dirhams.
- **B owes C** one hundred dirhams.

These three debts can also be dropped without any actual transfer of money, using *Hibat al-Thawāb*. The three parties may mutually agree to release one another, resulting in a complete clearing of debts:

1. The debt of B to A is set off against the debt of A to B.
2. The debt of A to C is set off against the debt of C to A.
3. The debt of C to B is set off against the debt of B to C.

Proof of validity

To illustrate, suppose A, B, and C are involved as follows:

- B owns one hundred dirhams and lends it to A.
- A then lends the same one hundred to C.
- C then lends the same one hundred to B.

Now, the money ends up back with its original owner (B), yet *each* of the three owes a debt because of the chain of loans. Even though A and C possess nothing, they still have formal liabilities.

By using *Hibat al-Thawāb*, each party can forgive his debtor. This forgiveness creates reciprocal debts that can be offset, allowing the entire structure to settle neatly — and the hundred remains with B, where it started.

Important point

Some conventional economic models mistakenly describe **debt creation** as **money creation**. However, the above chain of loans results only in the creation of debts, not new money. Likewise, when a bank receives deposits, it may lend to other parties who may, in turn, deposit the same money back into the banking system, and so on. In all such cases, no new money is created; rather, only potential debts increase.

Subtopic 6: Counting a Debt as Zakāt Payment

Since this issue overlaps conceptually with gifts and debt forgiveness, it is appropriate to examine it here. The question is whether a creditor may discharge his Zakāt obligation by offsetting it against what is owed to him by his debtor.

The answer, before considering juristic opinions, is that this application is practically invalid because it creates false financial records.

Suppose the creditor says to his debtor, "Take my debt as zakāt," and the debtor accepts.

Implications:
• **For the debtor:** He cancels the debt, assuming that he first received money (as zakāt) and then repaid that same amount (as debt settlement) — a false record.
• **For the creditor:** He also cancels the debt, assuming that he first received payment (against his receivable) and then discharged his zakāt obligation with that amount — likewise a false record.

Scholarly Opinions

Jurists differ:

- **Majority view:** *Not valid.* Zakāt must be physically given to an eligible recipient. Simply releasing a debtor from his debt does not satisfy the Zakāt obligation.
- **Minority view:** *Valid.* They argue that if the creditor could give the debtor cash and then immediately take it back, this should be equivalent to forgiving the debt directly — no difference.

Imam al-Nawawi, supporting the first view, said:
"If an insolvent debtor owes a debt, and the creditor intends to deduct it from his zakāt, there are two opinions. The stronger opinion — which is also the position of Abu Hanifa and Ahmad — is that it is invalid, because zakāt is only discharged when paid to the recipient. A second opinion, attributed to al-Hasan al-Basri and Ata', allows it[198]."

Al-Mawsuʿah al-Fiqhiyyah stated:
"It is not permissible for a creditor to waive a poor debtor's debt with the intention of zakāt. This is the view of Hanafis, Hanbalis, Malikis (except Ashhab), and the more correct view of the Shafi'is. Zakāt is a right of Allah,

[198] Al-Majmu by al-Nawawi: Vol. 6, pp. 196-197.

and cannot be used to recover one's own wealth or adjust one's own accounts[199]."

Sheikh Ibn ʿUthaymīn added:
"Zakāt requires both 'taking' and 'giving'. Allah says: *'Take from their wealth a charity'* (9:103). Waiving a debt does not involve giving, nor does it transfer ownership to the poor. It also tends to occur when repayment seems impossible — effectively enriching the creditor by writing off a hopeless loan, rather than fulfilling the duty to Allah[200]."

This issue becomes clearer when framed as **two separate debts**:

1. **The Zakāt debt:** what the payer owes to Allah.
2. **The private debt:** what the debtor owes to the creditor.

These two debts do **not** cancel each other out. True *set-off* requires reciprocal debts: each party must owe the other a debt[201]. Here, the poor man owes the rich, but the rich does **not** owe the poor. Therefore, there is no legal or moral basis for offsetting one against the other.

The Role of Possession in Zakāt

Some argue that "if the zakāt payer hypothetically gave the poor man cash and immediately took it back, the Zakāt would be discharged, so forgiving the debt should be the same[202]." But this overlooks a key principle:

- **When cash is handed over**, ownership is transferred to the recipient. The obligation of Zakāt is fulfilled because the poor person has taken possession of the wealth, even if he later chooses to return it.
- **When a debt is waived**, no transfer of possession occurs. Waiver is a gift (*hiba*) to the debtor, not an act of paying Zakāt.

This distinction is crucial: the wealthy person may forgive the loan, but such forgiveness has no connection to Zakāt.

---

[199] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 23, p. 300.
[200] Al-Sharh Al-Mumti' by Sheikh Ibn ʿUthaymīn: Vol. 6, pp. 236-237.
[201] See: Al-Sharh Al-Kabir by Al-Dardir (with Hashiat Al-Dusuqi): Vol. 3, p. 227.
[202] See: Al-Majmu' by Al-Nawawi: Vol. 6, pp. 196-197.

Further Clarification: Voluntary Charity vs Zakāt

Allah praises waiving debts as an act of voluntary charity:

> *"But if someone is in hardship, then let there be postponement until ease. And if you remit it as charity, that is best for you, if you only knew."* (2:280)

Voluntary charity does not necessarily require transfer of possession; it may occur simply by writing off a loan, such as through a gift of debt. **Zakāt**, however, is different. It is a specific right of Allah over wealth — a payment that must reach the poor, rather than being an internal accounting adjustment.

Prophetic Guidance on Differentiating Transactions:

When the Prophet ﷺ was offered meat that had been given to Barirah as charity, he said: *"It is charity for her, and it is a gift for us*[203]*."*

The hadith demonstrates that the same property can fall under different legal rulings depending on the transaction through which it passes. The ownership of the property was transferred from the original owner to Barīrah as charity, and then from Barīrah to the Prophet's family as a gift. This distinction provides the foundation for differentiating between primary and secondary transactions.

Primary vs Secondary transactions:

Transactions can be divided into primary and secondary categories. Primary transactions include charity, zakāt, sale, and loans; secondary transactions include actions such as forgiving a debt. This means that forgiving a debt follows another transaction.

Suppose you had 1,000 dirhams and lent it to someone. Without doubt, you could have given that amount as ṣadaqah — a primary transaction parallel to the loan. But after lending it, the only possible act is the secondary one: forgiving the debt. The same principle applies to zakāt: you were able to give that amount as zakāt (a primary transaction), but once it has become a loan, the only way forward is to collect the amount and then pay it as zakāt (as fresh Māl).

[203] Sahih al-Bukhari: Hadith: 1494, p. 364.

Example for Illustration: Primary vs Secondary Transactions

1. You gave 1,000 dirhams as *qard* → Primary transaction.
    - If you forgive the debt → Secondary transaction.
    - If the borrower repays you 1,000 dirhams, this amount becomes new Māl in your hand. The cycle then restarts — meaning you can now perform any primary transaction with it:
2. You give it as ṣadaqah → Primary transaction, not secondary.
3. Or you give it as zakāt → Primary transaction.

The framework is clear:

- Primary transactions = any act on Māl currently in your possession.
- Secondary transactions = actions that modify or conclude the *effects* of a prior transaction (such as forgiving a debt), not actions on fresh Māl.

Key principle:
Zakāt is a divine obligation requiring an actual transfer of wealth to the poor.

Topic 2: Ownership of the Gifted Item

We have already established that a debt arises as soon as the Hiba (gift) contract is concluded — unlike Muʿāwaḍāt contracts (commutative exchanges) — and we have mentioned some transactions that involve Hiba. At this stage, it is appropriate to ask: when exactly does ownership of the gifted item transfer to the recipient? Does the Mawhūb lahu (recipient) become the owner by contract alone, or only after taking possession? Jurists have differed on this question. In the discussion below, we first present their opinions, then compare the gift contract with the loan (Qarḍ) contract.

Subtopic 1: Opinions on the Ownership of Hiba

Jurists have long debated whether ownership in a Hiba arises immediately upon contract or only upon delivery. Al-Mawsūʿah al-Fiqhiyyah summarizes the views:

“Regarding a gift, which is the transfer of ownership without compensation, the majority of jurists (Hanafis, Shafiʿis, and Hanbalis) hold that ownership is

not transferred merely by offer and acceptance; rather, it requires possession with the permission of the Wāhib (donor). The Malikis, however, state that possession is not a condition for transfer of ownership in a gift; ownership passes immediately by virtue of the contract, and the donor is then obliged to deliver it to the donee[204]."

Al-Zuhayli draws the same conclusion:
"In summary, non-Malikis hold that the gift is owned only upon possession, while the Malikis hold that it is owned by contract[205]."

It is therefore clear that the majority believe a gift is owned by possession, while the Maliki school holds that it is owned upon conclusion of the contract.

Gift Owned by Contract – Evidence from Debt
We have already shown that a debt owed by the Wāhib (donor) arises as soon as the gift contract is made, even before the Mawhūb lahu (recipient) takes possession. This confirms that ownership is established through the contract itself. We saw this principle in other issues as well — for example, the dowry (ṣadāq), which is a debt Allah imposed on the husband as a gift to the wife, and the Prophet's ﷺ statement, "The guarantor (ḥamīl) is a debtor," showing that one who undertakes a liability becomes a giver (Wāhib) and thus a debtor at once. Likewise, when a debt is gifted to its debtor, the debt is immediately extinguished by the Hiba contract. These cases confirm that the ownership of the gift by contract is not merely theoretical but a firmly established practical rule.

Subtopic 2: Ownership of Gift vs Ownership of Loan (Qarḍ)

A gift is a Tabarruʿ (pure donation) contract, while a loan (Qarḍ) may contain elements of both Muʿāwaḍāt (exchange) and Tabarruʿ (donation)[206]. This affects how ownership is understood. Just as the jurists differed over gifts, they also differed over loans. The **majority** hold that the borrower — like the recipient of a gift — acquires ownership by taking possession; the **Malikis**

[204] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 30, p. 231.
[205] Al-Fiqh al-Islami wa Adillatuh by Al-Zuhayli: Vol. 5, p. 21.
[206] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 33, p. 122.

maintain that ownership (in both loan and gift) is established by contract. Al-Mawsūʿah al-Fiqhiyyah notes:

"The majority of Hanafis, Shafiʿis, and Hanbalis hold that transferring ownership in Qarḍ requires possession. The Malikis, by contrast, hold that the borrower owns the loan upon contract, without needing possession[207]."

Each Opinion is Correct in One Area

- In **gifts**, ownership is established by contract — confirming the Maliki view.
- In **loans**, ownership is established by possession — confirming the majority view.

Using Initial Debt-for-Debt as a Mirror

This distinction becomes significant when we analyze whether mutual debts can develop before possession.

Suppose B lends C 100 dirhams and C accepts the contract. Does C own the money before receiving it? If ownership were established by contract alone, then both parties would immediately owe each other debts — an instance of ibtidāʾ al-dayn bi-dayn (initial debt-for-debt). This outcome is untenable:

- If the borrower is deemed to own the 100 dirhams while they are still in the lender's hand, then the lender becomes a debtor to the borrower.
- At the same time, because the borrower is considered to own those 100 dirhams, he would also owe the lender a debt for what he has not yet taken.

This would require both parties to record reciprocal debts for the same amount — an absurd result. Therefore, the correct opinion is that a loan is owned only upon possession, as the majority hold.

By contrast, consider gifts: if B gifts C 100 dirhams and C accepts, C becomes the owner before taking possession, and B (the giver) becomes a debtor. In this scenario:

[207] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 30, pp. 231-232.

- If the recipient claims the 100 dirhams still in the giver's hand — recording that amount as "accounts receivable" — the giver cannot deny it.
- Correspondingly, the giver records it as "accounts payable" and is obligated to deliver the amount without expecting any counter-value in return.

This affirms the difference between ownership in a gift and ownership in a loan: in a gift, ownership is established at the outset without constituting an initial debt-for-debt, because a gift is not a *muʿāwaḍa* contract.

Al-Mawsūʿah al-Fiqhiyyah states: "The Malikis said: Possession is not a condition for transfer of ownership in a gift contract; rather, ownership passes by the contract itself, and the donor must hand it over to the donee[208]."
Ibn al-Qayyim confirms this general principle: "Whatever is owned without consideration, such as inheritance, will, or gift, may be disposed of before possession[209]."

Conclusion:
The **gifted item** is owned once the contract is concluded, as the Malikis assert. By contrast, the **loan** is owned only when the borrower actually takes possession, as the majority maintain. The *tadāyun* scale of balance must always be kept in mind — avoiding the conflation of **obligations** with **debts**.

[208] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 30, p. 231.
[209] Jami' al-Fiqh: Vol. 4, p. 196.

Section Two:
Revocation of Gift (Hiba)

We have previously examined jurisprudential issues surrounding ownership in gifts (hiba) and concluded that the recipient acquires ownership upon the contract itself. A related question arises: **Is it permissible for the giver to revoke a gift?** The following discussion surveys the main scholarly opinions on this issue and weighs them carefully on the *Mīzān* (scale of balance).

Topic 1: Opinions on Revoking a Gift

Jurists differ regarding whether a gift (*hiba*) may be revoked before the recipient (*Mawhūb lahu*) takes possession: three opinions are reported:

- Binding by contract (no revocation)
- Option to revoke before possession
- Revocation even after possession

1. Binding by contract:
This view holds that the gift becomes binding immediately upon contract, without requiring possession, and therefore cannot be revoked. Imam Mālik stated:

"A gift is binding by offer and acceptance without taking possession. If the Wāhib (giver) refuses to deliver it, the Mawhūb lahu (recipient) may compel him through the court to hand it over[210]*."*

2. Option to revoke before possession:
This view holds that the *Wāhib* (donor) retains the right to cancel the gift prior to delivery. Ibn Qudāmah stated:

"The giver has the option before the recipient takes possession. If he wishes, he may hand it over; otherwise, he may cancel it[211]*."*

[210] Al-Bayan fi Madhhab al-Shafi'i: Vol. 8, p. 114.
[211] Mughni Ibn Qudamah: Vol. 8, p. 242.

3. Revocation even after possession:
According to this view, the Wāhib may revoke the gift even after the recipient has taken possession. Mukhtasar al-Ṭaḥāwī stated: *"Every gift that has been given and delivered, the Wāhib (giver) has the right to take it back*[212]*."*

Yet this position rests on weak evidence, as several jurists have pointed out[213]. Importantly, the majority of scholars (Mālikis, Shāfiʿīs, and many Hanbalīs) reject the revocation of a gift once it has been delivered, citing the Prophet's statement: *"It is not permissible for a man to give a gift and then take it back, except for a father taking back what he has given to his child*[214]*."*

Topic 2: Revocation of Gift on the Mīzān (Scale)

After reviewing the various opinions on gifts, we now evaluate them in this topic. We will first present two examples of gift revocation, followed by Sharīʿa evidence that highlights the negative implications of this act. Through this, it becomes clear that the stronger position is that gifts become binding by contract and that revocation afterward is not permitted.

Example 1 (after possession):
If B gives a gift to C in public and C takes possession of it, may B later take it back?
The **answer is no.** According to the majority, it is not permissible for a person to take back a gift after the recipient has taken possession of it[215].

Example 2 (before possession):
Suppose B announces a gift to C in public, and C rises to accept it, but before he takes it, B revokes the offer. Is this permissible?
This question is directed at all jurists who permit the revocation of a gift before it is delivered. Before proceeding further, it is important to note the role

[212] Mukhtasar al-Tahawi: p. 138.
[213] A weak hadith states: "If a man promises his brother, intending to fulfill it, but does not keep his promise or come at the appointed time, he is not guilty of sin." Dha'if Sunan Abi Dawud - Albani: p. 406.
[214] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 42, pp. 147-148.
[215] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 22, p. 145.

of qiyās (analogy). The Prophet ﷺ once asked, "Do fresh dates decrease when they dry?" They replied, "Yes." He then said, "Then do not do that."

A parallel question may be asked here: "Does this act demean or belittle the recipient?" The answer is yes. Therefore, the same reasoning applies: one should not do that. The recipient has already been honored by the offer and has accepted it accordingly. The Prophet ﷺ said: "Whoever receives a favor from his brother, without asking for it or seeking it, let him accept it[216]." Thus, when the recipient has already extended his hand to take the gift, revoking it at that moment publicly humiliates him.

Without doubt, such behavior contradicts noble Islamic ethics. It seems that jurists who technically allow revocation[217] did not fully consider this scenario. This illustrates the gap between human ijtihād (which may err) and divine revelation (which remains valid for all times and places).

Juristic Statements against this action

- **Imam Mālik:** *"A gift is binding by offer and acceptance without taking possession. If the Wāhib refuses to deliver it, the Mawhūb lahu may compel him to hand it over[218]."*
- **Awjāz al-Masālik:** *"If the gift was witnessed at the time of giving, the giver has no right to retract it and must deliver it[219]."*
- **Ibn Ḥazm:** *"Whoever gives a valid gift is not permitted to take it back at all from the moment he gives it, except for parents taking back from their child; they may take it back at any time[220]."*

[216] Albani said: "Isnad Sahih". See: Silsilat Al-Ahadith al-Sahiha by Albani: Hadith: 1005, Vol. 3, p. 5.
[217] See: Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 6, p. 164.
[218] Al-Bayan fi Madhhab al-Shafi'i: Vol. 8, p. 114.
[219] Awajz Al-Masalik ila Muwatta' Malik: Vol. 14, p. 192.
[220] Al-Muhalla by Ibn Hazm: Vol. 8, p. 71.

Sharīʿa Evidence and Implications

Revocation of a gift is like building and then demolishing — an act both irrational and blameworthy. Allah says:
"And do not be like the woman who untwisted the thread that she had spun after it had become strong." (al-Naḥl: 92)

Moreover, revocation of a gift gives rise to several Sharīʿa violations:

1. Breach of commitment:
The Prophet ﷺ emphasized that a giver must fulfill his obligation. ʿAbdullāh ibn ʿĀmir narrated:

"My mother once called me while the Messenger of Allah was in our house. She said, 'Come here, I will give you something.' The Prophet asked: 'What do you intend to give him?' She replied: 'Dates.' He said: 'If you do not give him anything, a lie will be recorded against you[221].'"

This shows that reneging on one's commitment is morally blameworthy. Taking back a gift, therefore, is a serious offense. The Prophet (peace be upon him) said: *"The one who takes back his gift is like a dog that returns to its vomit[222]."*

2. Disruption of Social Cohesion:
Gifts strengthen bonds and foster affection, as the Messenger of Allah ﷺ said: *"Give gifts to one another and you will love one another[223]."*

In contrast, revocation of a gift weakens relationships, undermines harmony, and leads to discord within the community. Islam firmly condemns actions that fracture relationships and forbids a Muslim from severing ties with another Muslim. The Prophet ﷺ said:

[221] Sahih Sunan Abi Da'ud: Grade: Hasan (Albani), Vol. 3, p.226.
[222] Sahih Al-Bukhari: Hadith: 2621.
[223] Sahih Al-Adab Al-Mufrad – Al-Bukhari: Grade: Hasan (Albani), p.221. See: Irwa Al-Ghalil: Vol. 6, p. 44.

"It is not permissible for a Muslim to abandon (stop talking to) his brother for more than three nights[224]*."*

Even though a gift is a means of fostering reconciliation and bringing hearts together, as the hadith[225] indicates, it cannot serve as a price for reconciliation. Allah says:

"If you had spent all that is on the earth, you could not have brought their hearts together; but Allah brought them together." (Al-Anfāl: 63)

Indeed, harming reconciliation is a violation of a major Sharīʿa objective — one that holds a higher rank than fasting, prayer, and charity. The Prophet ﷺ emphasized: *"Shall I tell you of something better in degree than fasting, prayer, and charity? Reconciling people. Corruption between them is the shaver (of good deeds)*[226]*."*

3. Corrupting wealth:
The Prophet ﷺ said: *"Hold on to your wealth and do not corrupt it*[227]*."*

Taking back what has already become the recipient's property is unlawful (*ḥarām*) and diminishes the purity of one's own wealth.

Qur'anic Example: Allah says, *"And give the orphans their wealth, and do not exchange (take) the bad for the good (giving your ḥalāl)."* (Al-Nisā': 2). This means that one's lawful wealth should not be exchanged for what is unlawful.
Al-Ṭabarī explains: *"Your wealth is ḥalāl for you, but the orphan's wealth is ḥarām. Do not take the unlawful (ḥarām) in exchange for the lawful (ḥalāl)*[228]*."*

[224] Sahih Muslim: Hadith: 6532.
[225] "Give gifts to one another and you will love one another." Irwa Al-Ghalil: Vol. 6, p. 44.
[226] Sahih Sunan Abi Da'ud: Grade: Sahih (Albani), Vol. 3, p. 206.
[227] Sahih Muslim: Hadith: 1625.
[228] Tafsir Al-Tabari: Nisa': 2.

Similarly, taking back a gift after it has been given is akin to seizing what is no longer rightfully yours, thereby corrupting both your wealth and your relationships.

In conclusion, preserving human dignity is among the higher objectives of Sharīʿa. Revocation of a gift — particularly in public — contradicts this objective, undermining dignity, reconciliation, and social cohesion. It constitutes corruption that harms both relationships and wealth.

Important Point

It is not permissible to take back a gift. Even a father may not revoke a gift given to his son — except in cases where doing so would rectify an unjustifiable act, such as discrimination among his children. Some scholars explicitly stated that a father is not permitted to revoke all gifts (Durar al-Ḥukkām fī Sharḥ Majallat al-Aḥkām, 2:462).

This principle is supported by the ḥadīth of Nuʿmān ibn Bashīr, in which he recounted a gift he gave exclusively to one of his sons; the Prophet ﷺ rejected it after asking: "Have you given all your sons similar gifts?" (Ṣaḥīḥ Muslim: 4177). Social justice and reconciliation — among the foremost objectives of the Sharīʿa — begin within the family. Undermining these values through unjustified gifting is therefore unacceptable.

Topic 3: Comparing Hiba to Other Donations

Jurists classify contracts into **Muʿāwaḍāt** (commutative contracts) and **Tabarruʿāt** (non-compensatory agreements). Muʿāwaḍāt contracts involve an exchange of value between parties, such as buying and selling, while Tabarruʿāt contracts are based on generosity and do not involve an exchange of equivalent value.

There is also a distinction between the two categories with respect to the emergence of **debt** and the formation of **obligations**.

In terms of debt:
In a Muʿāwaḍāt contract, a debt does not arise merely upon signing the contract. In contrast, in a Tabarruʿāt contract, the debt arises immediately upon the Wāhib's (giver's) offer.

In terms of obligation:
In a Muʿāwaḍāt contract, both parties bear mutual obligations — as in a sale, where the seller must deliver the goods and the buyer must pay the price. The same principle applies to other commutative contracts such as Salam, Istisnāʿ, and Tawrīd (supply contracts).

In Tabarruʿāt contracts, however, there are no mutual obligations; the obligation rests solely upon the giver. This includes Hiba (gift), ʿUmra, Waqf (endowment), wills, and vows.

We will now compare **Hiba** with other forms of donation to demonstrate that, in terms of fulfilling obligations, there is no fundamental difference among them.

1. ʿUmra

Islam upholds human dignity and does not permit humiliation. On this basis, anyone who grants ʿUmra (lifelong grant) is not allowed to revoke it, because his word has cut off his right to it.

Hadith evidence
The Prophet (peace be upon him) said:

- *"Whoever gives ʿUmra to a man, it belongs to him and his heirs. His word has cut off his right to it*[229]*."*
- *"Hold on to your wealth and do not corrupt it. Whoever gives ʿUmra, it belongs to the one to whom it was given, whether he is alive or dead, and to his heirs*[230]*."*

[229] Sahih Muslim: Hadith: 1625
[230] Sahih Muslim: Hadith: 1625

- *"ʿUmra is valid for the one to whom it was given, and Ruqbā is valid for the one to whom it was given, and the one who takes back his gift is like the one who goes back to his vomit*[231]*."*

It is evident from this that whoever grants ʿUmra or Ruqbā cannot revoke it. ʿUmra is a type of Hiba[232]. When a gift is given, the giver's statement cuts off his right to it.

The Messenger of Allah (peace be upon him) said: *"ʿUmra is for the one to whom it was given as a gift*[233]*."*
This means that the donor cannot revoke the gift, regardless of whether he says, "It is yours as long as you live," or "It is yours and your heirs' after you": no distinction between these expressions.

Al-Mawsūʿah al-Fiqhiyyah records: *"As for the Hanbalis, they made no distinction between these expressions. Al-Buhūtī said: The Hiba is valid in all such cases, and these are examples of ʿUmra; it belongs to the recipient (Muʿammar) and his heirs after him*[234]*."*

2. Vows (Nadhr)

If a person makes a vow, he must fulfill it. Allah the Almighty says: *"And let them fulfill their vows"* (Hajj 29). A vow creates a debt from the moment it is declared.

Hadith evidence
Ibn ʿAbbās narrated: *"A woman came to the Messenger of Allah (peace be upon him) and said: O Messenger of Allah, my mother died owing a fast. Should I fast on her behalf? He said: If your mother had owed a debt and you paid it off, would it suffice her? She said: Yes. He said: Then fast on behalf of*

[231] Sahih Sunan Al-Nasa'i: Grade: Sahih (Albani), Vol. 2, p. 576.
[232] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 30, p. 312.
[233] Sahih Muslim: Hadith: 1625
[234] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 30, p. 313.

your mother." In another narration: *"A debt owed to Allah is more deserving of being paid off*[235]*."*

Practical example of a vow

ʿUmar said to the Prophet (peace be upon him): *"I vowed during the pre-Islamic period to spend a night in iʿtikāf in the Sacred Mosque."* The Prophet replied: *"Fulfill your vow*[236]*."*

This shows that a vow becomes binding immediately, creating a debt, such as saying, "I owe Allah a fast" or "I owe Allah to give this sheep as charity." If a specific item is vowed, ownership of that item is cut off from the vow-maker. If no particular item is mentioned, the vow becomes a liability. In both cases, fulfillment of the vow is obligatory.

Juristic evidence

Shaykh ʿAṭiyyah Ṣaqr: *"If someone vows something, it must be used for the vow. It no longer belongs to him, as Allah said: 'And let them fulfill their vows' (Hajj 29). If he vows to give a sheep or food, it must be given to the poor. He cannot benefit from it in any way — not even the skin or wool. Scholars even stated that the butcher should not be rewarded with anything from the vowed item itself*[237]*."*

Al-Jazīrī cited the Mālikīs: *"A specific vow must be fulfilled exactly as stated*[238]*."*

Al-Sirāj al-Wahhāj: *"If a person vows to sacrifice something specific, he must slaughter it at the appointed time*[239]*."*

---

[235] Sahih Muslim: Hadith: 1148

[236] Sahih Al-Bukhari: Hadith: 2032.

[237] Mawsu'ah Ahsan al-Kalam fi al-Fatawa by Attia Saqr, Former Chairman of the Fatwa Committee at Al-Azhar: Vol. 7, p. 705.

[238] Al-Fiqh Ala Al-Madhahib Al-Arba'a by Al-Jaziri: Vol. 2, p. 73.

[239] Al-Siraj Al-Wahhaaj 'ala Matn Al-Minhaj: p. 563.

Pronouncement is required

Anwar al-Masālik notes: *"A vow must be verbal and must include a commitment such as 'I owe Allah…' — intention alone is insufficient*[240]*."*

3. Wills (Waṣiyyah)

If a person bequeaths something (e.g., a thousand dirhams) in his will, his statement is valid. Upon his death, the heirs are obliged to execute it. Inheritance is distributed only after fulfilling any wills or debts, as Allah said: *"After payment of any bequest which was made or debt"* (Nisāʾ 12).

Imam Zufar's statement

"The essence of a will is the offer by the testator alone, and ownership is established for the legatee without acceptance, just like inheritance[241]*."*

This means the legatee owns the specified asset upon the testator's death[242], including any gains after death, and is responsible for its expenses. If the legatee refuses, it reverts to the heirs.

Juristic evidence

Al-Nawawī in *Al-Majmūʿ*: *"The ownership of a will does not require possession*[243]*."*

Al-Buhūtī: *"Ownership acquired through inheritance, will, or ghanīmah may be disposed of before possession*[244]*."*

Ibn al-Qayyim: *"Whatever is owned without consideration — inheritance, will, or gift — may be disposed of before possession*[245]*."*

---

[240] Anwar al-Masalik (Sharh Umdat al-Salik in the Shafi'i School) by Muhammad al-Zuhri al-Ghamrawi: p. 154.
[241] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 12, p. 172.
[242] See: Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 43, p. 227.
[243] Al-Majmu' by Al-Nawawi: Vol. 16, p. 414.
[244] Kashshaf al-Qina' by Al-Buhuti: Vol. 3, p. 245.
[245] Jami' al-Fiqh - Yasser al-Sayyid Muhammad: Vol. 4, p. 196.

This confirms that inheritance, wills, and gifts share the same ruling: the recipient may dispose of them without taking possession first.

4. Waqf (Endowment)

If a person endows property, it becomes binding and cannot be revoked or sold.

Hadith evidence
Al-Bukhārī narrated that the Prophet (peace be upon him) told ʿUmar: *"If you wish, keep the property as it is and donate its benefit."* So ʿUmar endowed it on that basis, stipulating that it could not be sold, gifted, or inherited[246].

Juristic evidence
Al-Mawsūʿah al-Fiqhiyyah: *"The usufruct of a waqf belongs to its beneficiary[247]."*

Al-Majmūʿ: *"There is consensus that beneficiaries own the proceeds of waqf[248]."*

Taqī al-Dīn al-Ḥisnī: *"Ibn al-Qass excluded certain properties acquired without consideration — like inheritance, wills, waqf proceeds — from the requirement of possession before sale[249]."*

Gift (Hiba) is not different

A gift (Hiba) transfers ownership just like the other donations. The obligation in Tabarruʿāt is unilateral and even stronger than the bilateral obligations of Muʿāwaḍāt.

- **ʿUmra**: irrevocable once granted.
- **Vow**: takes effect upon pronouncement, creating a debt[250].

[246] Sahih Al-Bukhari: Hadith: 2737.
[247] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 39, p. 329.
[248] Al-Majmu' by Al-Nawawi: Vol. 16, p. 274.
[249] Al-Qawa'id by Taqi al-Din al-Hisni: Vol. 4, p. 146.
[250] "A debt owed to Allah is more deserving of being paid off." Sahih Muslim: Hadith: 1148.

- **Will**: transfers ownership upon death, without requiring possession[251].
- **Waqf**: becomes binding and cannot be revoked or sold.

Similarly, in a Hiba, ownership passes as soon as the offer is made. Al-Kasānī said: *"A gift, in Arabic, is a mere offer from the owner without requiring acceptance*[252]*."*

Specific vs non-specific gifts

- If the donor specifies an item ("This car is yours"), ownership passes immediately[253]; if possession is delayed, the item remains a trust with the donor.
- If the gift is unspecified (such as "100 dirhams"), it becomes a debt owed by the donor, similar to Abu Qatādah's statement: *"I will pay the two dinars*[254]*."*

Gift vs Sale

In a sale, ownership of a specific item does not pass until possession (qabḍ); in a gift, ownership passes upon the offer rather than upon possession. Therefore, the recipient may dispose of the gift before taking delivery.

Juristic evidence

- **Ibn al-Qayyim:** *"Whatever is owned without consideration — inheritance, will, or gift — may be disposed of before possession*[255]*."*
- ***Al-Mawsūʿah al-Fiqhiyyah*:** *"Malikīs say possession is not required for ownership to pass in a gift; the donor must hand it over*[256]*."*
- **Imām Mālik:** *"A gift is binding upon offer and acceptance; if the donor refuses delivery, the recipient may compel him in court*[257]*."*

---

[251] The Hanafis, Malikis, Shafi'is, and Hanbalis all expressed this view. See: Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 12, p. 172.
[252] Bada'i' al-Sana'i' by Al-Kasani: Vol. 8, p. 85.
[253] Awajz Al-Masalik ila Muwatta' Malik: Imam Ahmad said: "If the gift is a specific item, it is valid without possession, according to the more correct opinion." Vol. 14, p. 183.
[254] See: Irwa Al-Ghalil – Albani (Hakim and Thahabi said: Sahih, Albani graded: Hasan) Vol. 5, p. 248.
[255] Jami' al-Fiqh: Vol. 4, p. 196.
[256] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 30, p. 231.

- **Ibn Ḥazm:** *"Whoever declares a gift or charity has entered a binding contract*[258]*."*
- **Abū Thawr, Dāwūd, and old Shāfiʿī view:** *"Ownership of a gift is established before possession*[259]*."*
- **Al-Buhūtī:** *"The gifted item is owned by contract; the recipient may dispose of it before taking possession*[260]*."*

Conclusion:

The distinction between Muʿāwaḍāt and Tabarruʿāt is essential, observable, and well-established. Blurring the two leads to legal and financial complications, particularly in determining the proper rights and obligations of the parties. Muʿāwaḍāt are founded on exchange and mutual obligations, whereas Tabarruʿāt rest on generosity and unilateral commitment. Hiba aligns with other forms of donation in that ownership transfers upon offer, and the resulting obligations are unilateral and decisively binding.

Important Point:
The legal implications established for donations likewise extend to **trust transactions**. Once the settlor signs a trust agreement in favor of a beneficiary — such as an impoverished or disabled person — the arrangement becomes irrevocably binding. The settlor may not revoke the gift, nor may the trustee contravene the terms of the trust deed.

Topic 4: The Gift in Hand and Its Automatic Reversion

Building on the previous discussion — concerning the impermissibility of gift revocation and the comparison of Hiba with other forms of donation — this topic examines two key issues:

- The legal status of a gifted item already in the recipient's possession.

[257] Al-Bayan fi Madhhab al-Shafi'i: Vol. 8, p. 114.
[258] Al-Muhalla by Ibn Hazm: Vol. 8, p. 71.
[259] Awjaz Al-Masalik - Muhammad Zakaria: Vol. 14, p. 183.
[260] Sharh Muntaha al-Iradat by Al-Buhuti: Vol. 4, pp. 394-395.

- The conditions under which a gift (Hiba) may revert to the donor — a natural reversion that does not arise from the donor's right to revoke, such as when the Mawhūb lahu rejects it.

1. Gift in the Recipient's Hand

Suppose the Wāhib (giver) grants something to another person. A question arises: if the gifted item is already in the hands of the Mawhūb lahu (recipient) at the time of the gift, does he require formal permission to take possession? Jurists differ on this point.

One may wonder, at first glance, why jurists analyze such concepts — like permission and completion of transfer — in such depth. Yet modern institutions demonstrate the relevance of these rulings, particularly in matters such as salaries, bonuses, and similar entitlements.

Juristic Opinions

Ibn Qudāmah stated:
"If the *Wāhib* (giver) gives the *Mawhūb lahu* something already in his hands, such as a deposit or something usurped, then — as apparent from Ahmad's words — this gift is valid without requiring any further possession or lapse of time. In another narration from Ahmad, however, the recipient must obtain permission to take possession[261]."

Al-Hāwī al-Kabīr noted:
"If the dowry is a specific asset already in the husband's hands, and the wife forgives it, her forgiveness is a pure gift. But does the husband require permission to retain it? There are two views: (1) No permission is needed since it is already in his possession; (2) Permission is necessary, because his possession of it was on her behalf, and that status does not change without her consent[262]."

[261] Al-Mughni by Ibn Qudamah: Vol. 8, p. 244.
[262] Al-Hawi Al-Kabir by Al-Mawardi: Vol. 9, p. 520.

Ashhab (Mālikī) said:
"If the item is already in the recipient's hands, his possession is valid even if he does not accept it until after the donor's death, because its benefit is best realized when already with the recipient[263]."

Shaykh Ibn ʿUthaymīn explained:
"When an item is already in the *Mawhūb lahu*'s possession — like a borrowed book that the owner then gifts — no permission is required. The borrower automatically becomes the owner. This applies to items held as a loan (*ʿāriyah*), a deposit (*wadīʿah*), or even property that has been usurped. If an owner gifts to a usurper what he had usurped, the gift is complete upon offer, since the item is already in the recipient's hands[264]."

Reconciling the Views
The disagreement may be resolved by distinguishing between:

- **Items held by individuals:** If a borrowed book is gifted to the borrower while in his possession, he does not require permission to keep it.
- **Items held by institutions:** If property is managed by companies or government bodies — such as salaries, bonuses, or end-of-service benefits — formal authorization from the relevant authority is required, even if the asset is physically accessible to the recipient.

2. When Gift Reverts Automatically

When a person gives a gift, he (the donor) is obliged to honor that act. However, a gift may revert automatically — before acceptance or possession — if, for example, the recipient declines it. In such cases, the donor is released from any liability.

[263] Al-Bayan wa Al-Tahsil by Ibn Rushd: Vol. 15, p. 304.
[264] Al-Sharh Al-Mumti' by Ibn ʿUthaymīn: Vol. 11, p. 71.

Example:
The Prophet ﷺ wished to buy a camel from ʿUmar ibn al-Khaṭṭāb. ʿUmar said, "It is for you, O Messenger of Allah." The Prophet replied, "Sell it to me," and ultimately purchased it[265].

This indicates that ʿUmar's initial offer ("It is for you") was a gift. However, since the Prophet wished to purchase the camel rather than accept it as a gift, the gift reverted, and the camel was sold instead.

Another example of gift reversion occurs when a creditor forgives a debtor's obligation as a gift. If the debtor refuses to accept the offer, the gift of debt is considered to have reverted.

Al-Jazīrī records:
"The Hanafis permit a gift of debt. However, if the debtor declines the 'gift of debt,' the gift reverts, and the debtor remains indebted, according to the preferred opinion[266]."

This shows that if a recipient does not accept a gift, the donor remains in his prior legal position. In the above case, when the debtor does not accept the offer, the gift reverts, and the original debt remains legally binding.

Likewise, a guarantor may assume a debt voluntarily (hiba), intending no recourse against the debtor. If the debtor makes full payment to the creditor or is later released from liability by the creditor, the guarantor is also released — the gift effectively reverts.

Al-Jazīrī, citing the Mālikīs, wrote:
"The release of the debtor entails the release of the guarantor, but not vice versa. For example, if one guarantees another's debt and the creditor waives it as a gift, the guarantor is automatically discharged[267]."

[265] Sahih AL-Bukhari: Hadith: 2115.
[266] Al-Fiqh Ala Al-Madhahib Al-Arba'a by Al-Jaziri: Vol. 3, p. 265.
[267] Al-Fiqh Ala Al-Madhahib Al-Arba'a by Al-Jaziri: Vol. 3, p. 211.

Ibn Qudāmah similarly stated:
"If the creditor receives full payment from the debtor or releases him from liability, the guarantor is released as well[268]."

Thus, the principle of gift reversion applies to guarantees: once the original debtor's liability is extinguished, the guarantor's corresponding liability also falls away.

[268] Umdat al-Fiqh by Ibn Qudamah: p. 58.

Section Three:
End-of-Service Benefits

End-of-service benefits are typically mandatory payments that employers must make to employees upon termination of their employment, subject to specific conditions. Companies recognize this provision as a liability on their financial statements and disclose it annually in their financial reports. In this section, we examine how this provision relates to the concept of a gift.

Topic 1: Juristic Opinions

Contemporary jurists have expressed differing views regarding end-of-service benefits. The key questions include:

- Do end-of-service benefit funds remain the company's property before employees receive them?
- Should these funds be treated as a debt owed by the company?
- Who bears the zakāt due on these funds?

First Opinion: Not a Debt, Company's Property
This view holds that the end-of-service benefit remains property of the company and does not constitute a debt; therefore, zakāt is payable on these funds.

Muhammad Naim Yassin states:
"Based on our research, these funds remain the property of the employer — whether an individual or a company — and do not become the employee's property until after termination of service. These funds are therefore not debts owed by employers and should not be deducted from zakāt-payable assets, which is our preferred view. This also applies to end-of-service benefits and savings plans[269]."

Second Opinion: A Debt Deductible from Zakātable Assets
Dr. Abdul Sattar Abu Ghuddah argues that:

[269] Abhath Fiqhiyah fi Qadaya al-Zakat al-Muʿasirah by a Group of Researchers: p. 192.

"The end-of-service benefit and pensions, before being disbursed, are considered a debt owed by the company. As such, these funds are deducted from zakatable assets[270]."

Third Opinion: A Debt Not Deductible from Zakatable Assets

The Fatawas of Dubai Islamic Bank state:

"This provision is set aside to meet the bank's obligations to employees when their service ends. Although employees are not eligible for the benefit until termination, it remains a debt owed by the bank. Because these funds are guaranteed for the employees, the principle *al-ghunm bil-ghurm* applies: profits generated by these provisions belong to the shareholders, who in turn must pay zakāt on them[271]."

This third opinion aligns with the first in ruling that these funds are **not deducted from zakatable assets**, and with the second in viewing them as **a debt owed by the company**. The fatwa from Dubai Islamic Bank explicitly affirms that end-of-service benefit is a company debt but does not reduce zakatable assets — an important point that will become clearer later in this study, as the existence of debt does not necessarily negate zakāt liability.

Topic 2: End-of-Service Benefit as a Debt Owed by the Company

The end-of-service benefit can be viewed as a form of **gift (tabarruʿ)** that becomes binding once certain conditions are met[272]. Earlier, we established that a gift imposes a debt on the donor toward the recipient[273].

To understand this more clearly, we first recall how gifts and similar unilateral obligations operate in Islamic law.

---

[270] Zakat on End of Service Benefit by Dr. Abdul Sattar Abu Ghuddah: p. 15.

[271] Fatawa Bank Dubai Al-Islami: Vol. 2, p. 961.

[272] Dr. Abdul Sattar Abu Ghuddah stated in his research on 'End of Service Benefit': "It is a commitment to donate, either voluntarily or at the direction of the ruler, in a way that serves the public interest and does not contradict the Sharīʿa." p. 8.

[273] This issue is explained in more detail within the Zakat on debt section.

The Debt and Obligations Perspective

Unlike bilateral exchange contracts (muʿāwaḍāt), a gift contract creates a unilateral obligation and gives rise to a debt, as the donor (wāhib) incurs a liability upon making the offer.

Guarantee (ḥamālah) without recourse embodies a gift. Al-Māzirī affirmed: "As for ḥamālah, it is a gift to the debtor[274]." Al-Qarāfī adds: "After the ḥamālah contract is concluded, it follows the rulings of gifts[275]." Such a guarantee, as it includes hiba, creates a debt against the original debtor. The Prophet ﷺ said: *"The guarantor is a debtor (ghārim[276])."* Scholars unanimously regard *ghārimūn* as debtors[277].

Likewise, if someone grants *'umrā* (a lifelong grant), he cannot revoke it once offered. The Prophet ﷺ said: "Whoever gives 'umrā to a man, it belongs to him and his heirs. His word has cut off his right to it[278]."

Similarly, a vow creates a debt from the moment it is pronounced. The Prophet ﷺ said: "A debt owed to Allah is more deserving of being fulfilled[279]."

Overall, the Qur'an strongly warns against failing to fulfill such commitments:

"And among them are those who made a covenant with Allah, saying, 'If He gives us from His bounty, we will spend in charity and be among the righteous.' But when He gave them from His bounty, they became stingy and turned away. So He caused hypocrisy to settle in their hearts until the Day they meet Him, because they failed to fulfill what they promised Allah and because they used to lie." (Tawbah 75–77)

These examples set the stage for understanding end-of-service benefits: when the condition is fulfilled, a debt arises immediately.

---

[274] Sharh al-Talqin fi al-Fiqh al-Maliki by Al-Maziri: Vol. 3, p. 156.
[275] Al-Dhakhira fi Furu' al-Malikiyah – Al-Qarafi: Vol.9, p. 209.
[276] Sahih Sunan Abi Da'ud: Grade: Sahih (Albani): Vol. 2, p. 389.
[277] Ahkam Al-Qur'an – Al-Jassas: Vol. 4, p. 327.
[278] Sahih Muslim: Hadith: 1625
[279] Sahih Muslim: Hadith: 1148.

Practical Application:

The end-of-service benefit functions as a **conditional gift.** Once the condition is met — for example, if the employee has worked for more than one year — the company becomes indebted for this amount. Since this provision is not tied to a specific asset, it remains part of the company's property, but under its liability until disbursed.

Example:

- Company assets: 700,000 dirhams
- End-of-service liability: 100,000 dirhams
- Shareholders' equity: 600,000 dirhams (two equal partners, B and C)

If partner B sells his shares to D, and later C sells his to E, the two new partners acquire the assets and assume the liabilities, including the 100,000 dirhams end-of-service benefit. This liability does not vanish upon transfer of ownership. Successors remain responsible for paying these funds to the qualified employees.

Thus, the new owners cannot claim the benefit is their personal donation to the employees. It is clearly a **debt owed by the company**, not a voluntary gift from the new individual shareholders.

The Fatawas of Dubai Islamic Bank confirm this principle explicitly:
"This provision is set aside to cover the bank's financial obligations to employees when their service ends… Therefore, it is a debt owed by the bank and must be paid to employees whose service ends[280]."

Additional Considerations

This ruling carries several implications:

- **Employees cannot access these funds** unless formally disbursed. Even managers require authorization to handle them.

[280] Fatawa Bank Dubai Al-Islami: Vol. 2, p. 961.

- **Changes in company ownership** — through sale, merger, liquidation, or inheritance — do not cancel the obligation. The successor must fulfill all liabilities.

Prophetic Example

The principle of successors honoring previous commitments is illustrated by Jābir ibn ʿAbdullāh (RA):

"When the Prophet ﷺ passed away, Abū Bakr received property from al-ʿAlāʾ ibn al-Ḥaḍramī. Abū Bakr said, 'Whoever has a debt claim against the Prophet, or was promised something by him, should come to us so we may fulfill it.' I told him, 'The Messenger of Allah promised me such-and-such (spreading my hands three times).' So Abū Bakr counted out for me five hundred (gold pieces), then five hundred, then five hundred[281]."

This demonstrates that a successor assumes responsibility for prior obligations — a principle equally binding on companies and institutions regarding liabilities such as end-of-service benefits.

Conclusion

End-of-service benefits originate as voluntary grants (*tabarruʿāt*) — once offered and their conditions are fulfilled, they become binding debts. These obligations remain enforceable regardless of changes in management, ownership, or corporate structure, and must be honored just like any other financial liability.

[281] Sahih al-Bukhari: 2683.

Chapter Four:
The Role of Wakālah in Activating Guarantee and Transfer

- **Section One: Agency in Guarantees and Transfers**
- **Section Two: Contemporary Applications of Ḥawāla**
- **Section Three: Contemporary Applications of Guarantees**

Section One:
Agency in Guarantees and Transfers

Wakāla (agency) is a primary driver of many financial transactions, including ḍamān (guarantee) and ḥawāla (transfer). Through an agent, a person may purchase an item and acquire ownership or sell an item and transfer ownership. Thus, wakāla is a powerful instrument that connects parties and facilitates the smooth operation of financial transactions.

This chapter discusses several issues related to wakāla, beginning with the debt that arises from wakāla, while debts arising from possession and gift have already been covered. One key outcome of this discussion is clarifying the confusion caused by conflating wakāla debt with loan debt — a misunderstanding that has rendered many lawful transactions unlawful.

Topic 1: Debt Arising from Wakāla (Agency Debt)

Two Scenarios of Wakāla arise:

- The agent advances his own funds.
- The principal provides the funds first.

The agent advances funds:
A person may delegate another to act on his behalf in various transactions, including buying, selling, and settling debts. If the agent makes a payment on behalf of the principal using his own funds — or extinguishes a debt owed by the principal — this creates a debt owed by the principal to the agent. This is known as "wakāla (agency) debt." Suppose the agent purchases an item using his own funds on behalf of the principal: the item immediately belongs to the principal, and the agent holds a rightful claim to reimbursement. This claim constitutes a wakāla debt, since the agent advanced payment on the principal's behalf. The debt is reconciled once the principal repays the agent.

The principal provides the funds first:
If, however, the principal first provides the purchase price to the agent, and the agent then executes the instruction, no wakāla debt arises. The transaction

reduces to two reciprocal transfers — money for goods (*māl for māl*) — as though the principal had purchased the item directly, without creating any additional obligation between them. The difference between this scenario and the previous one lies in the creation of wakāla debt, where the agent has recourse to the principal.

Juristic Evidences

Al-Qudoori stated:

"If the agent pays the price from his funds and takes possession of the sold item, he has a right of recourse against the Muwakil (principal). If the unretained item is destroyed in his possession, it is destroyed from the principal's property, and the price is not waived[282]*."*

Al-Imrani said:

"If the Wakīl (agent) pays the price to the seller, he has a right of recourse against the principal[283]*."*

Ibn Qudamah stated:

"When an agent pays money on behalf of the principal with his permission, this payment is considered to have been made by the principal himself, because he has appointed him in his place[284]*."*

From the above, it is clear that if the agent pays the price with his own funds, the principal owes him a debt (agency debt). The sold item is deemed the property of the principal (Muwakil). Therefore, if the item — while in the agent's possession — is destroyed or damaged without negligence on the part of the agent, such destruction does not affect the debt obligation (wakāla debt); the agent retains a right of recourse against the principal.

[282] Mukhtasar Al-Qudoori: p. 116.
[283] Al-Bayan fi Madhhab Al-Imam Al-Shafi'i by Al-Imrani: Vol. 6, p. 429
[284] Mughni Ibn Qudamah: Vol. 7, p. 213.

Extinguishing a debt on behalf of the principal:
Likewise, if the Muwakil (principal) owes a debt to another person and his agent pays it on his behalf, the debt is extinguished, as the agent is acting on behalf of the principal.

Practical Example
A owes C one thousand dirhams. A says to B: "Pay my debt, and I will repay you." B then pays C on A's behalf.

At this stage, if we ask A, "Do you owe C any debt?" he will answer, "No." But if we ask him, "Do you owe B a debt?" he will answer, "Yes." This shows that once the first debt was extinguished, a new debt arose — the wakāla (agency) debt. When A finally repaid B (the agent), all debts were settled.

Tadāyun Balance

- **Debt 1:** A owes C (the original debt).
- **Debt 2:** C owes A (because C received money from A through B acting as A's agent).
    - These two debts cancel each other out.
- **Debt 3:** A owes B (wakāla debt).
- **Debt 4:** B owes A (because B received money from A as principal).
    - These two debts cancel each other out.

Thus, all debts are extinguished, and the tadāyun balance is achieved.

Note: If Debt 1 between A and C originates from a gift — where A gifts money to C and payment is made on his behalf by his agent — this single example illustrates three kinds of debt simultaneously: possession debt, gift debt, and wakāla debt.

Wakāla Debt vs Loan Debt
It is important to note that the new debt owed by the Muwakil (principal) to the Wakīl (agent) is not a debt that arose from a loan. Rather, it is a debt that arose from wakāla (agency) because the agent, under a wakāla agreement, can act on behalf of the principal (Muwakil) and pay off the Muwakil's debt. On

the other hand, the lender cannot act on behalf of a debtor to settle the debt in his capacity as a lender — a key distinction between agency and loan.

Accounting Treatment Required

Based on the above, the wakāla debt should appear on the agent's balance sheet under the item **"Wakāla Debtors"** (accounts receivable), as the agent has paid these amounts on behalf of the Muwakil (principal).

Regarding the principal's balance sheet, it should be listed under the item **"Wakāla Creditors"** (accounts payable). That is because the Muwakil (principal) must pay it off after his original debt has been extinguished.

Topic 2: The Role of Agency in Activating Guarantee

Ḍamān (guarantee) carries a broad meaning that extends to nearly all financial transactions, including sales, jaʿāla, and ijāra. For example, in a sales contract, the buyer guarantees the payment, while the seller guarantees the goods. Likewise, in a jaʿāla contract, the jāʿil (offeror) guarantees a specified compensation to anyone (worker) who achieves the agreed result. This is explicitly stated in the Qur'an regarding the loss of the king's cup: *"And whoever brings it shall be given a camel-load, and I guarantee that."* (Yusuf: 72).

In some cases, a second guarantor may join the first, resulting in two guarantors for the same obligation. This arrangement is called *"Ḍammu Dhimma ilā Dhimma"* — joining one Dhimma to another[285]. In this context, *Dhimma* refers to a guarantee, not a debt.

Juristic evidence

- Al-Zamakhshari stated: *"Dhimma is a covenant and guarantee*[286]*."*
- Al-Fayyumi said: *"Their saying: Such and such is in my Dhimma, means: It is in my guarantee*[287]*."*

[285] See: Mughni Ibn Qudamah: Vol. 7, p. 71, and Al-Dur Al-Mukhtar: p. 451.
[286] Al-Fa'iq fi Gharib al-Hadith by Mahmud ibn 'Umar al-Zamakhshari: Vol. 2, p. 16.
[287] Al-Misbah Al-Munir by Al-Fayyumi:

- Ibn Arafah said: *"Dhimma means guarantee. 'It is in my Dhimma' means it is in my guarantee. The People of Dhimma (Ahl Dhimma) are those under the guarantee of Muslims*[288]*."*

Using this framework, we will analyze key juristic disagreements concerning guarantees — particularly whether a guarantee releases the debtor from liability and whether it may result in two simultaneous debts.

Subtopic 1: Opinions: Does the Guarantee Release the Debtor?

Suppose C buys a commodity from A for a deferred price, and B guarantees the payment. Does this guarantee release C (the debtor) from the debt merely by virtue of the contract, before the debt is actually paid? Jurists differ:

1. The guaranteed person is released by contract
Some jurists hold that a guarantee itself extinguishes the debtor's debt and transfers it entirely to the guarantor.

Ibn Hazm stated in *Al-Muhalla*:
"Ibn Abi Layla, Ibn Shubrumah, Abu Thawr, Abu Sulayman, and all of our colleagues believe that the debt of the guaranteed person (debtor) is completely extinguished. The creditor (Madmun lahu) has no right of recourse against the original debtor, since the debt has been transferred to the guarantor, regardless of whether the guarantor treats him fairly or not[289]*."*

2. The guaranteed person is not released by contract
Other jurists maintain that the existence of a guarantee does not, by itself, release the debtor from the original debt.

Al-Imrani said: *"The guaranteed person is not released from debt by a guarantee. This is the view of Malik, Abu Hanifa, and most scholars*[290]*."*

Al-Shawkani wrote: *"The guaranteed person (debtor) is only released by the guarantor's performance, not by mere guarantee*[291]*."*

[288] Umdat al-Huffaz fi Tafsir Ashraf Al-Alfaz by Ahmad ibn Yusuf: Fasl: Dhal and Mim.
[289] Al-Muhalla by Ibn Hazm: Vol. 6, p. 400.
[290] Al-Bayan fi Madhhab al-Imam al-Shafi'i by Al-Imrani: Vol.6, p. 321.

Those who hold that the guaranteed person is not released by mere contract, however, differ on whether there is one debt or two distinct debts — one owed by the original debtor and another by the guarantor.

Al-Zuhayli explained:
"According to the most correct view among the Hanafis, the Kafāla (guarantee) is joining one Dhimma to another in a claim, without exception. There is a single debt owed by the original debtor (guaranteed person), not by the guarantor. The Mālikis, Shāfiʿīs, and Ḥanbalīs said: Kafāla (guarantee) is the joining of the guarantor's dhimma to the guaranteed person's dhimma in debt obligation. So, the debt is owed by both of them, as stated in Al-Mughni by Ibn Qudamah al-Hanbali[292]*."*

Ibn Qudamah wrote:
"If a guarantor guarantees it on his behalf, the debtor is not released from the debt. Rather, the debt is owed by both of them. The creditor has the right to demand it from whomever he wishes. If he recovers it from the debtor (guaranteed person) or releases him, the guarantor is released[293]*."*

To determine whether ḍamān (guarantee) results in one debt or two, it may be classified based on whether the guarantor intends recourse or not.

Subtopic 2: Recourse vs Non-Recourse Guarantee

A guarantee may be given with or without the intention of recourse against the debtor. This distinction affects whether there is a single debt or two debts.

1. Guarantee with the intention of recourse (one debt)
When a guarantor pays on behalf of the debtor with the intention of claiming repayment, the payment is not regarded as a gift. In this case, at the time of the contract, the guarantor does not bear an independent debt — only the original debtor does.

[291] Nayl al-Awtar by Al-Shawkani: Vol. 10, p. 296.
[292] Al-Fiqh Al-Islami wa Adillatuhu by Al-Zuhayli: Vol. 5, p. 132.
[293] Umdat al-Fiqh by Ibn Qudamah: p. 58.

Example:
C buys goods from A on credit, and B guarantees payment. When the debt matures, B pays A on behalf of C, then collects reimbursement from C. In this case, no gift was intended.

Tadāyun Balance: The Mīzān of Analysis

- **Debt 1:** C owes A (original debt).
- **Debt 2:** A owes C (because C's payment passes through B, acting as C's agent). → These cancel out.

- **Debt 3:** C owes B (wakāla debt: B paid on C's behalf).
- **Debt 4:** B owes C (since B momentarily held C's money). → These cancel out.

Thus, the guarantor in this case is not independently indebted at the outset when concluding the guarantee. This reflects the Hanafi view that there is only one debt owed by the debtor.

Supporting juristic statements:
The following juristic statements apply in the above case, where there is a guarantee with the intention of recourse (one debt).

Al-Zuhayli: *"According to the most correct view among the Hanafis, the Kafāla is the joining of one Dhimma to another in a claim… There is a single debt owed by the original debtor, not by the guarantor*[294]*."*

Ibn Juzayy[295] and Badr Al-Din Al-ʿAyni[296] stated: "*If the guarantee is at the command of the debtor, the guarantor has a right of recourse against the debtor for what he paid on his behalf."*

Al-Khiraqi: *"The debtor is not released unless the guarantor pays. When the guarantor pays, he may recover it from the debtor*[297]*."*

[294] Al-Fiqh Al-Islami wa Adillatuhu by Al-Zuhayli: Vol. 5, p. 132.
[295] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 28, p. 236.
[296] Al-Binayah Sharh Al-Hidayah by Badr Al-Din Al-ʿAyni: Vol. 8, p. 465.
[297] Matn Al-Khiraqi: p. 74.

2. Guarantee without the intention of recourse (two debts)
If the guarantor does not intend to seek recourse, the guarantee involves a gift element, and a new debt arises — a gift-debt owed by the guarantor.

Example:
C owes A two dinars. B guarantees the debt, then pays A without intending to collect from C.

- B becomes a *ḥamīl* — bearing the debt without recourse.
- B is also an agent (*wakīl*) since he paid on behalf of C.

Tadāyun Balance: The Mīzān of Analysis

- **Debt 1:** C owes A (original debt).
- **Debt 2:** A owes C (because A received C's payment through B). → These two debts offset each other.

- **Debt 3:** B owes C (gift debt: no right of recourse).
- **Debt 4:** C owes B (wakāla debt: B used his own funds on C's behalf). → These two debts offset each other.

Note: This example includes both gift debt and wakāla debt. Hibat al-Thawāb would apply in the same way if we assume B was a creditor of A and voluntarily waived that debt in favor of C. Since the debts are balanced and offset each other, this supports the view that both the debtor and the guarantor are considered indebted at the outset — otherwise the debts would remain unbalanced.

Supporting juristic statements:
The following juristic statements apply where there is a guarantee without the intention of recourse (two debts).

Al-Zuhayli: *"The Mālikis, Shāfiʿīs, and Ḥanbalīs said: Kafāla (guarantee) is the joining of the guarantor's dhimma to the guaranteed person's dhimma in debt obligation. Therefore, both are in debt*[298]*."*

[298] Al-Fiqh Al-Islami wa Adillatuhu: Vol. 5, p. 21.

Al-Tuwaijri: *"If a guarantor guarantees a debt, he will be rewarded, but the debtor is not released; rather, both are in debt*[299]*."*

These scholars thus recognized that the guarantor must also be deemed a debtor — a conclusion that applies when the guarantor intends no recourse. In such instances, the guarantor deliberately assumes a separate debt (gift debt) and therefore cannot claim repayment.

Hadith evidence

The guarantor (*ḥamīl*) who bears debt without recourse is himself considered a debtor[300].

The Prophet (peace be upon him) said: *"The debt must be paid, and the guarantor is a debtor (ghārim)*[301]*."*

Ibn Abbas reported: *"The Prophet bore a debtor's debt, then paid it, saying: 'The guarantor is a debtor (ghārim)*[302]*.'"*

Al-Mudawwana al-Kubra by Imam Malik records: *"It has been proven that the Messenger of Allah said: 'The ḥamīl is a debtor. The zaʿim (guarantor) is a debtor (ghārim).' This is a binding guarantee*[303]*."*

The term "*ghārim*" refers, by consensus, to a debtor. Abu Bakr al-Jassas said: *"The scholars did not differ that the ghārimun are the debtors*[304]*."* Imam al-Shafiʿi added: *"The ghārimun (debtors) include everyone who owes a debt, whether or not he has assets to pay*[305]*."*

[299] Mawsu'at al-Fiqh al-Islami by Al-Tuwaijri: Vol. 3, p. 510.
[300] Sahih Sunan Al-Nasa'i: Grade: Sahih (Albani): Vol. 2, p. 380.
[301] See: Sahih Sunan Abi Da'ud: Grade: Sahih (Albani): Vol. 2, p. 389.
[302] See: Jami' Al-Usul fi Ahadith Al-Rasul - Ibn Al-Athir: AL-Daman.
[303] Al-Mudawwana al-Kubra by Imam Malik: Vol. 13, p. 104.
[304] Ahkam Al-Qur'an – Al-Jassas: Vol. 4, p. 327.
[305] Al-Umm of Imam al Shafi'i: Vol. 3, p. 213.

In all cases, debt must be settled

The Prophet ﷺ said, *"A believer's soul remains suspended because of his debt until it is paid on his behalf*[306]*."* When Abu Qatada paid two dinars for a deceased debtor, the Prophet said: *"Now, his skin is cool*[307]*,"* meaning his debt was cleared.

Ibn al-Qasim explained Malik's statement: *"The guarantor has no recourse against the deceased,"* noting that this applies because such a guarantee involves a gift[308].

Conclusion:

From the above discussion, the principle becomes clear: when the guarantor intends no recourse, he becomes independently indebted. At the same time, the debt originally owed by the debtor remains outstanding until it is fully settled.

Topic 3: The Role of Agency in Activating Transfers

Humans can represent one another in fulfilling obligations; otherwise, transactions would become difficult — one would have to pursue the debtor alone for settlement. **Ḥawāla** (transfer) serves as one of the legitimate means of settling debts, and its operation inherently involves agency. The Prophet (peace be upon him) said:

"Default on payment by a solvent debtor is unjust, and if one of you is referred for payment to a wealthy person, he should accept the reference[309]*."*

Ibn Qudāmah said:

"The scholars unanimously agree on the permissibility of transfers in general[310]*."*

This topic highlights the significance of ḥawāla and addresses key juristic differences, as discussed below.

---

[306] Sunan Al-Tirmidhi: Grade: Sahih (Albani), Vol. 1, pp. 546-547.

[307] See: Irwa Al-Ghalil – Albani (Hakim and Thahabi said: Sahih, Albani graded: Hasan) Vol. 5, p. 248.

[308] Umdat al-Qari Sharh Sahih al-Bukhari- Badr Al-Din Al-'Ayni: Vol. 12, p. 159.

[309] Sahih AL-Bukhari: Hadith: 2287.

[310] Muqni Ibn Qudamah: Vol: 7, p. 56.

Subtopic 1: Opinions on Transfer

The main points of disagreement are:

- Is Ḥawāla an **independent contract** or merely an **exemption from a sale of debt**?
- Is the **Muḥīl** (transferor) released from the debt by the mere act of transfer?

Juristic Statements:

1. Is ḥawāla a sale of debt or not?

Ibn Qudāmah: *"Scholars unanimously agree on the permissibility of Ḥawāla in general. The term 'Ḥawāla' means transferring a debt from one person's obligation (dhimma) to another. Some jurists maintain that it is a sale, but the correct view is that it is an independent facilitative contract. If it were a sale, it would not be permissible because that would constitute a sale of debt for debt*[311]*."*

Al-Muntaqā: *"Judge Abū Muḥammad said Ḥawāla is an exception to debt, like ʿArāyā and the sale of fresh dates. But Judge Abū al-Walīd held that Ḥawāla is not a sale of debt-for-debt*[312]*."*

Ibn Taymiyyah: *"Ḥawāla is a type of contract to settle a debt, not a sale*[313]*."*

AAOIFI Sharīʿa Standards: *"Ḥawāla is a legitimate and independent contract based on courtesy, not sale. It facilitates payments and debt settlement*[314]*."*

In summary, some jurists consider Ḥawāla to be a sale of debt-for-debt, while others (Ibn Qudāmah, Judge Abū al-Walīd, Ibn Taymiyyah, and AAOIFI) view it as a separate contract that is not connected to a sale.

---

[311] Muqni Ibn Qudamah: Vol: 7, p. 56.
[312] Al-Muntaqa Sharh Muwatta Malik: Vol. 6, p. 452.
[313] Majmu' Fatawa Ibn Taymiyyah: Vol. 20, p. 512.
[314] AAOIFI Sharia Standards: No. 7 (Al-Ḥawāla)

2. Is the muḥīl released by transfer?

Opinion 1: Yes, he is released:
Ibn Qudāmah: "The Muḥīl is released by mere transfer, even before possession[315]."

Al-Nawawī: "The Muḥīl is released from the debt owed to the Muḥāl (creditor) by the transfer[316]."

Opinion 2: No, he is not released:
Al-Zuḥaylī, citing Ḥasan al-Baṣrī and Zufar (Ḥanafī): "The Muḥīl is not discharged except by actual payment, not merely by transfer. Zufar said: Ḥawāla does not release the Muḥīl from liability; like the guaranteed person, he remains in debt until payment is made[317]."

In addressing these disagreements, we will present practical examples that demonstrate two points: first, that the muḥīl is not automatically released by transfer; and second, that ḥawāla is not a form of sale.

Subtopic 2: Debt Is Not Extinguished by Mere Transfer

A debtor may settle his debt **directly** or **through an agent**. If he refers his creditor to a third party (*Muḥāl ʿalayh*), and this party pays the debt, the debtor is discharged. Ḥawāla thus functions through **agency**, whether or not the payer already owes a debt to the transferor.

(1) Transfer to One Who Owes No Debt
This is sometimes referred to as *unrestricted Ḥawāla (Ḥawāla Muṭlaqah)*. When the payer (*Muḥāl ʿalayh*) owes nothing to the transferor (*Muḥīl*) but still pays on his behalf, a **new debt** arises — the *wakāla debt* — giving the payer recourse against the transferor.

[315] Muqni Ibn Qudamah: Vol. 7, p. 84. Kanz Al-Daqa'iq by Al-Nasafi: p, 458. Al-Qawanin Al-Fiqhiyyah by Ibn Juzayy: pp. 538-539.
[316] Al-Siraj Al-Wahhaj Sharh Al-Minhaj: p. 239.
[317] Fiqh al-Islami wa Adillatuh by Al-Zuhayli: Vol. 5, p. 173.

Taʿlīqāt Badāʾiʿ al-Ṣanāʾiʿ: "Ḥawāla is like Wakāla (agency) in execution[318]."

Example:

- *A* owes *C* a debt.
- *A* refers *C* to *B* (Muḥāl ʿalayh).
- *B* pays *C* from his own funds and later recovers the amount from *A*.

Tadāyun balance:

- **Debt 1:** A owes C (original debt).
- **Debt 2:** C owes A (since C received funds via B, A's agent). → These offset each other.

- **Debt 3:** A owes B (wakāla debt — B paid on A's behalf).
- **Debt 4:** B owes A (because B received repayment from A). → These offset each other.

This shows that the Muḥāl ʿalayh functions as an agent rather than a lender when making payments on behalf of the transferor. In this case (unrestricted ḥawāla), however, the payer retains the right of recourse against the Muḥīl after settling the debt.

Majallat al-Aḥkām al-ʿAdliyya: "If the Muḥīl makes an unrestricted transfer to one with no prior debt, the Muḥāl ʿalayh has recourse against the Muḥīl after payment[319]."

(2) Transfer to One Who Already Owes a Debt

This is called *restricted Ḥawāla*. When the payer (*Muḥāl ʿalayh*) is already indebted to the transferor (*Muḥīl*), no recourse arises — the debts simply cancel.

Example:

- *A* owes *C* a debt.
- *A* refers *C* to *B*, who already owes A.

[318] Ta'liqat Bada'i' al-Sana'i' by Sheikh Ali Muhammad Mu'awwad and Sheikh Adel al-Mawjud: Vol. 7, p. 155.

[319] Majallat AL-Ahkam Al-Adliyyah: Article 691.

- *B* pays *C*.

Tadāyun balance:

- **Debt 1:** A owes C (original debt).
- **Debt 2:** C owes A (payment received through B). → Offset each other.

- **Debt 3:** B owes A (pre-existing debt).
- **Debt 4:** A owes B (wakāla debt). → Offset each other.

Again, the transfer involves **agency**, whether or not B owes A.

Ibn Qudāmah: "The Muḥīl may pay his debt directly or through an agent. In Ḥawāla, the Muḥāl ʿalayh takes his place in delivering the money[320]."

Ḥawāla Consistent with Qiyās (Analogy)
A debt is not discharged until it is **actually settled**. Imam Zufar said, *"Ḥawāla does not release the Muḥīl from liability; like the guaranteed person, he remains in debt until payment is made*[321]*."*

This position is reflected in the case of **checks**: issuing a check constitutes a form of ḥawāla. The buyer's debt is not discharged merely by writing the check; it remains until the check is honored and the funds are collected.

Dr. Ṣitr al-Juʿayd states: "Those who say that Ḥawāla releases the debtor immediately lack explicit evidence. Preserving creditors' rights is a valid Sharīʿa objective; this is analogous to a check, where the debt remains until the funds are collected[322]."

Subtopic 3: Broader Applications of Ḥawāla

Jurists also debated cases like:

- Gifting a debt to someone other than the debtor.

[320] Mughni Ibn Qudamah: Vol. 7, p. 63.
[321] Bada'i' al-Sana'i' by Al-Kasani: Vol. 7, pp. 420-421.
[322] Ahkam al-Awraq al-Naqdiyah wa al-Tijariyah by by Sitr Al-Juaid: p. 314.

- Purchasing goods in exchange for a third party's debt.

Some see these as impermissible debt sales; others classify them as Ḥawāla[323].

The following practical applications illustrate that ḥawāla fundamentally differs from the sale of debt — the former is permissible, while the latter is not.

a) Buyer Refers Seller to a Third Party

If a buyer instructs the seller to collect payment from his debtor, this is Ḥawāla — not a sale of debt. The buyer is only released if the third party actually pays.

Ibn Ḥazm: "It is not permissible to sell a debt… but one may buy on credit and refer the seller to one's debtor — this is lawful[324]."

b) Tenant Refers Lessor to a Third Party

Ḥawāla applies to lease payments under the same principle: the debt is extinguished upon payment by the referred party.

c) Gift of Debt to a Third Party

Suppose C owes A 100 dirhams, and A gifts this right to B. Jurists differ on the validity of such a gift[325]. In practice, however, the transaction takes the form of Ḥawāla (not sale): A refers B to C, and once C pays, the debt is extinguished — not at the time of transfer.

Tadāyun Balance

- **Debt 1:** A owes B (gift debt).
- **Debt 2:** B owes A (payment via C). → Offset each other.

- **Debt 3:** C owes A (original debt).

[323] See: Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 21, pp. 130-131. Majmu' Fatawa Ibn Taymiyyah: Vol. 29, p. 403.

[324] Al-Muhalla by Ibn Hazm: Vol. 7, p. 487.

[325] See: Al-Fiqh Ala Al-Madhahib Al-Arba'a by Al-Jaziri: "Within the Shafi'i school, some scholars argue that gifting a debt to someone other than the debtor is valid, while others argue it is invalid." Vol. 3, p. 267.

- **Debt 4:** A owes C (wakāla debt). → Offset each other.

This demonstrates that a gift of debt to a third party takes effect through agency and transfer, not through sale.

d) Transfer in Salam

Since Ḥawāla is an independent contract rather than a sale, its application also extends to the Salam contract.

- The ***Muslam ilayhi*** may refer the ***Muslim*** (the fund provider) to another party for delivery of the goods. Ibn ʿUthaymīn stated: "This transaction is permissible[326]."
- The **Muslim** may refer someone to the **Muslam ilayhi** to receive goods. *Ibn ʿUthaymīn:* "Referral in Salam is valid[327]."
- If a Salam contract is cancelled, the Salam capital may be transferred. Al-Nawawī said: "Since the right belongs to both parties, it is permissible for them to agree to cancel the Salam contract[328]."

e) Transfer Before Taking Possession of Goods

A buyer who has paid but not taken delivery may refer his creditor to the seller. This is allowed because Ḥawāla is not a sale.

Al-Jazīrī (citing the Mālikī school) wrote: "One may buy food not yet possessed, then refer his creditor to the seller to take what was purchased as repayment[329]."

Likewise, Imām Mālik permits that if someone borrows food, he may, prior to taking possession, refer his creditor to the lender for repayment[330].

In conclusion, this confirms that ḥawāla is not a sale but founded on agency: every ḥawāla entails an agency relationship, though not every agency constitutes ḥawāla. In it, the referred party (Muḥāl ʿalayh) delivers goods or funds on behalf of the transferor, thereby extinguishing both obligation and debt.

---

[326] Al-Sharh Al-Mumti' by Ibn ʿUthaymīn: Vol. 9, p. 91.
[327] Al-Sharh Al-Mumti' by Ibn ʿUthaymīn: Vol. 9, p. 91.
[328] Al-Majmu' by al-Nawawi: Vol. 12, p. 249.
[329] Al-Fiqh Ala Al-Madhahib Al-Arba'a by Al-Jaziri: Vol. 2, p. 212.
[330] Al-Mudawwana Al-Kubra of Imam Malik: Vol. 9, p. 143.

Section Two:
Contemporary Applications of Ḥawāla

Ḥawāla is among the most significant financial transactions. It forms, as this section explains, the basis for many modern banking operations — including money transfers, card payments, and checks — connecting people and businesses worldwide.

Topic 1: Bank Transfer

This topic examines issues related to bank transfers, including juristic opinions on whether a bank transfer constitutes ḥawāla, as well as its practical implications, such as charging fees for transfers and exchanging funds, especially when the transfer involves different currencies.

1. Opinions on Bank Transfers

Although jurists generally agree that bank transfers are permissible, they disagree on how to classify them, and this classification affects related rulings, just as their differences on debt: Is it truly Māl (wealth)? If not, the implication is that zakāt would not be obligatory on it[331]. Similarly, their disagreement over set-off transactions leads to different legal outcomes. Some jurists consider set-off a "sale of debt for debt," which they prohibit, while others reject this characterization and therefore permit it[332].

Accordingly, jurists also differ on how to classify ḥawāla itself: is it a sale or not? If it is considered a sale, the implication is that a transfer to a non-debtor, for example, would be invalid. Al-Shirazi explained:

"Ḥawāla is the sale of debt for debt. Therefore, the transferor is not permitted to refer someone to a non-debtor — if there is no debt, the sale is void.

[331] Al-Manthur fi al-Qawa'id by al-Zarkashi: Vol. 1, p. 365
[332] Almuqassat bayn Al-duyun Al-naqdia by Dr. Abdullah Al-Dershawi: p. 10.

However, some of our companions said it is valid if the payer (Muḥāl ʿalayh) agrees[333]."

Modern scholars express similar disagreements regarding bank transfers:

- **Some consider a bank transfer a standard Ḥawāla.**

The bank acts as an intermediary just as in classical Ḥawāla, where a creditor is referred to an indebted third party.

- **Others classify it as Suftajah.**

The sender (who deposits money with the bank) is considered a lender, and the bank a borrower that repays in another country. This arrangement resembles the historical Suftajah, in which someone entrusts funds to another to disburse elsewhere.

- **A third view treats it as a paid agency (*Wakāla bi-Ajr*).**

The bank acts as the sender's agent to transfer funds, and this arrangement constitutes *Ijāra* since the bank receives a fee.

Dr. Yusuf Al-Shubaili summarized these opinions:
"Contemporary scholars differed on classifying bank transfers:

1. A Ḥawāla contract, whether or not the payer is indebted;
2. A Suftajah, where the sender is a lender and the bank a borrower;
3. A fee-based agency contract, where the bank is a paid agent[334]."

After presenting the juristic disagreements related to the classification of bank transfers, we now examine their nature, form, and operation.

2. Bank Transfer as a Form of Ḥawāla

A bank transfer is a form of ḥawāla, even though its practical structure incorporates elements of wakāla (agency) and ijāra (hiring) — similar to how other contracts, such as muḍāraba, combine multiple contractual features.

[333] Al-Muhadhdhab by Al-Shirazi: Vol. 3, p. 305.
[334] Al-Muamalat Al-Maliyah by Dr. Yusuf Al-Shubaili: Vol. 2, pp. 71-72.

Muhammad al-Tamar Tashi said: *"Muḍāraba begins as a deposit, then becomes an agency with work, and finally a partnership if it yields profit*[335]*."*

Ibn al-Qayyim similarly explained that the *Muḍārib* is a trustee upon receiving funds, an agent in managing them, and a partner if profit results[336].

In a bank transfer, the sender initially instructs the bank (acting as his agent) to transfer funds to a specific recipient, paying a fee if necessary — this involves wakāla bi-ajr. The Islamic Fiqh Academy states:

"If a transfer is made for a fee, it is considered an agency with compensation (*wakāla bi-ajr*)[337]."

From another angle, when a debtor uses a bank to pay his creditor, informs the creditor, and directs him to collect from the bank, this arrangement mirrors classical ḥawāla: the debtor is the transferor (muḥīl), the creditor the transferee (*muḥāl*), and the bank the payer (*muḥāl ʿalayh*).

Ḥawāla does not negate agency:

From the above, it is clear that this topic should not be examined by isolating classical ḥawāla, bank transfers, and agency from one another.

The fiqh principle of ḥawāla (transfer) is based on the hadith: *"If one of you is referred for payment to a wealthy person, he should accept the reference*[338]*."*

Hence, the ruling of ḥawāla applies broadly. It encompasses both its classical form and modern mechanisms, such as bank transfers.

Moreover, practical analysis shows that the *Muḥāl ʿalayh* (payer) ultimately acts as the transferor's agent. Ibn Qudāmah stated:

[335] Tanweer al-Absar wa Jami' al-Bihar fi al-Fiqh ala al-Madhhab al-Hanafi by Muhammad al-Tamar Tashi: p. 310.
[336] Zaad al-Ma'ad fi Hadyi Khair al-'Ibad by Ibn al-Qayyim: Vol. 1, pp. 154-155.
[337] International Islamic Fiqh Academy: 1995, Resolution: 84.
[338] Sahih AL-Bukhari: Hadith: 2287.

"The muḥīl may pay off his debt directly or through his agent. In the latter case, the muḥāl ʿalayh takes his place in delivering the money[339]*."*

Thus, a bank transfer remains a form of ḥawāla in its broader sense while simultaneously involving agency — with or without compensation.

Distinguishing Ḥawāla from pure agency

- In ḥawāla, the recipient (e.g., the creditor) collects money for himself, not on behalf of another. If the funds are lost while in his possession, the loss falls upon him.
- In pure agency (wakāla), the agent receives funds on behalf of the principal and is not liable if they are lost without negligence, as the agent and principal are treated as one party in this regard.
- In a principal–agent transaction, the instruction is simply: "Give such-and-such money to so-and-so", where the specified person may be the muḥāl or another individual. For example, Fatima bint Qays narrated: *"Abu ʿAmr ibn Ḥafṣ sent his agent to deliver barley to her*[340]*."* This is a straightforward instruction to an agent acting on behalf of the principal. However, if Abu ʿAmr were to contact her and refer her to collect the barley from his agent, this would constitute an act of classical ḥawāla. In both cases, the payer's role remains that of an agent.

Suftajah as transfer:

If someone deposits money with another, who then gives him a written letter addressed to his agent in a different location, instructing the agent to pay an equivalent amount to the bearer (the depositor), this constitutes a form of ḥawāla. The payer, acting as an agent, may later reclaim the funds from the transferor.

After illustrating that a bank transfer is a form of Ḥawāla incorporating agency, we now turn to the permissibility of charging a fee for such transfers.

[339] Mughni Ibn Qudamah: Vol. 7, p. 63.
[340] Sahih Muslim: No. 1480.

3. Charging a Fee for a Bank Transfer

A Ḥawāla transaction may be carried out either voluntarily or for a fee. The Qur'anic verse, *"If you wished, you could have taken for it a payment"* (al-Kahf: 77), together with the account of Dhū al-Qarnayn (al-Kahf: 94–95), establishes that work may be undertaken free of charge or in exchange for compensation — both being valid in Sharīʿa.

Hadith evidence further supports this distinction. Regarding voluntary service, the Prophet ﷺ said: *"Helping a man onto his mount ... is charity. A good word is charity*[341]*."* Regarding remuneration, he ﷺ said: *"Give the worker his wage before his sweat dries*[342]*."*

Accordingly, when a fee is charged in a Ḥawāla transaction, the arrangement incorporates the element of *wakāla bi-ajr*[343]. On this basis, financial institutions may lawfully charge fees for transfer services, whether fixed or percentage-based.

Dr. Al-Shubaili said: *"This commission is permissible whether it is a lump sum ... or a percentage of the transferred amount, as both are agency fees*[344]*."* The Sharīʿa Standards[345] and the Permanent Committee for Scholarly Research[346] also permit charging a fee for transfers.

Historical precedent exists: Abdullah ibn al-Zubayr in Mecca arranged payments through his brother Musʿab in Iraq, and Ibn Abbas approved[347]. Whether or not a fee was charged, this constituted Ḥawāla.

---

[341] Sahih Muslim: No. 2335.
[342] Sahih Sunan ibn Majah: Grade: Sahih (Albani), Vol. 2, p. 287.
[343] International Islamic Fiqh Academy: 1995, Resolution: 84.
[344] Fiqh Al-Muamalat Al-Masrifiyah by Dr. Yusuf Al-Shubaili: p. 18.
[345] AAOIFI Sharīʿa Standards: No. 1.
[346] Fatawa al-Lajnah al-Da'imah Lilbuhuth al-Ilmiyyah: Fatwa No. 12416, Vol. 13, p. 454.
[347] Sunan Al-Bayhaqi: Vol. 5, p. 577.

4. Exchange in Bank Transfers

A bank transfer is fundamentally a form of Ḥawāla, but (as discussed earlier) may also involve other elements, such as ṣarf (currency exchange) carried out through agency.

- If the remittance and receipt are in the same currency, no exchange takes place.
- If the currencies differ, the transfer combines ṣarf (exchange) with agency, which is permissible. Ibn al-Mundhir reported unanimous agreement on the lawfulness of appointing an agent for currency exchange[348].

A similar case exists in Muḍāraba: before starting the work, the muḍārib may be handed capital in one currency to convert it into another, which will serve as the unit of account for the Muḍāraba. The International Islamic Fiqh Academy states:

"The Muḍārib may be assigned the task of converting the initial funds into another currency before commencing the investment. The converted amount then constitutes the Muḍāraba capital. This currency exchange may be done with or without a fee, subject to mutual agreement[349]*."*

Al-Bukhari also records that ʿUmar and Ibn ʿUmar appointed agents to handle currency exchange[350].

Based on this analogy, the International Islamic Fiqh Academy ruled that if a transfer is made in a currency different from the deposit, it constitutes both exchange (ṣarf) and transfer[351].

If a transfer requires currency exchange (e.g., dirhams into dollars), the intermediary — whether a bank or money changer — sets the exchange rate,

[348] Al-Ishraf by ibn Al-Mundhir: Vol. 8, p. 312.
[349] See: Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 38, p. 79.
[350] Sahih Al-Bukhari: Kitab al-Wakāla.
[351] International Islamic Fiqh Academy: 1995, Resolution: 84.

records it, and delivers the amount to the recipient. The transferor need not hold the dollar amount in advance; the key is fulfilling the obligation at the agreed rate.

5. Bank Transfers are Guaranteed

Banks typically mix client funds with their own and use them before disbursement, making the bank a guarantor of the transferred amount. The International Islamic Fiqh Academy ruled that agents operating public transfers are guarantors like "commonly hired workers[352]."
Similarly, Al-Fiqh al-Manhaji describes postal orders as guaranteed funds since institutions mix and later disburse them[353].

Because money is fungible, the bank need not return the same banknotes if a transfer is cancelled[354]. Scholars such as Dr. Ali al-Salous[355] and Dr. Saleh al-Marzouqi[356] confirm that paper currency is interchangeable like gold and silver coins. Thus, if funds are lost, the bank must repay an equivalent amount.

Conclusion:
Bank transfers fall under Ḥawāla in Islamic jurisprudence. They may be structured as a standard transfer, *Suftajah*, or a fee-based agency (*Wakāla bi-Ajr*), but in all cases, they involve agency and are guaranteed by the bank. Charging fees is permissible, currency exchange within the transfer is allowed, and the overall process remains consistent with Islamic principles.

[352] International Islamic Fiqh Academy: 1995, Resolution: 84.
[353] Al-Fiqh Al-Manhaji 'ala al-Madhhab al-Shafi'i: Vol. 6, p. 195.
[354] See: Al-Sharh al-Mumti' by Ibn ʿUthaymīn: Vol. 8, p. 452.
[355] Majallat Majma' al-Fiqh al-Islami: Issue No. 2, Vol. 2, p. 1092.
[356] Majallat Majma' al-Fiqh al-Islami: Issue No. 9, Vol. 1, pp. 262-263.

Topic 2: Transfers Using Cards and Commercial Paper

1. Transfers Using Bank Cards

Bank cards were introduced primarily to facilitate daily financial transactions, such as shopping or withdrawing cash from ATMs. The two main types are debit cards, which draw funds directly from the user's account, and credit cards, which allow delayed payment.

From an Islamic jurisprudential perspective, transactions made using bank cards often constitute **Ḥawāla** (transfer). When a card is used to purchase goods or services, three parties are typically involved:

- **The cardholder (Muḥīl / transferor)**
- **The merchant (Muḥāl / transferee)**
- **The card issuer (Muḥāl ʿalayh / payer)**

Dr. Ibrahim Shasho explains:
"When using this card for the purchase of goods from a merchant, the relationship is between three parties: the card issuer, the cardholder, and the merchant who owns the goods. This transaction is considered Ḥawāla (transfer). The cardholder is the Muḥīl (transferor), the merchant is the Muḥāl (transferee), and the card issuer (the bank) is the Muḥāl ʿalayh (payer)[357]."

Similarly, Dr. Wahba Al-Zuhayli affirms that the relationship between the card issuer and its holder in such a case is one of **Ḥawāla**[358], and Dr. Saʿad Abd Muhammad clarifies that the cardholder refers the merchant to the bank to collect payment, making the transaction a type of transfer rather than a cash settlement[359].

[357] Bidaqat al-Itiman Haqiqatuha wa Takyifuha by Dr. Ibrahim Muhammad Shasho – Majallat Jamiatu al-dimishiq: Mujallad 27, Issue 3, 2011, p. 660.
[358] Bidaqat al-Itiman (Bahth) by Dr. Wahba Al-Zuhayli - Islamic Fiqh Council - Muscat, Oman, 2004.
[359] Bidaqat al-Itiman al-Masrifiyah min Manthur Islami – Dr. Saad Abd Muhammad: Journal of the Baghdad College of Economic Sciences: Issue 34, 2013, p. 13.

Two scenarios:

1. **Direct payment** – If the buyer pays the merchant in cash, no Ḥawāla occurs.
2. **Indirect payment via bank** – If the buyer (the cardholder) pays through the bank, the transaction involves Ḥawāla.

Similarly, if the cardholder withdraws cash from an ATM belonging to a different bank, this too is considered Ḥawāla. The cardholder borrows money from the ATM owner and refers them to the issuing bank for repayment. As Fathi Shawkat notes:

"In case the cardholder withdraws an amount from a bank machine other than the one that issued the card, this is considered a valid Ḥawāla (transfer). The cardholder borrowed the amount, then referred the lender (device owner) to the bank that issued the card[360]."

What if the cardholder has no balance?
If a bank pays on behalf of a cardholder who lacks funds, the bank is acting as an **agent (wakīl)** rather than as a lender. The debt that arises is therefore an **agency debt**, not a loan.

2. Transfers Using Checks and Bills of Exchange

Commercial papers such as **checks, promissory notes, and bills of exchange** are recognized forms of documentation[361].

When a buyer issues a check to a seller, the seller is referred to a solvent party (the bank) under the Prophetic ḥadīth: *"If one of you is referred for payment to a rich person, he should accept the reference[362]."*

AAOIFI Sharīʿa standards affirmed:

- The **drawer (issuer)** of the check is the **Muḥīl (transferor)**.
- The **bank** is the **Muḥāl ʿalayh (payer)**.

[360] Bidaqat al-Itiman al-Bankiyah fi al-Fiqh al-Islami by Fathi Shawkat: p. 75.
[361] See: International Islamic Fiqh Academy: 1992, Resolution: 64.
[362] Sahih AL-Bukhari: Hadith: 2287.

- The **beneficiary (seller)** is the **Muḥāl (transferee)**[363].

If the check is returned:
The debtor is not discharged merely by issuing a check; the debt is extinguished upon payment. If the bank refuses payment, the creditor retains the right to claim directly from the debtor — meaning the Ḥawāla becomes void.

Al-Shirbīnī (Shāfiʿī Madhhab) supported this analogy: *"If the buyer refers the seller to another person and then returns the item due to a defect or similar cause, the Ḥawāla (transfer) is void according to the most apparent opinion, because of the annulment of the sale*[364]*."*"

Certified checks:
A certified check, even though guaranteed by the bank after verifying available funds, does not constitute constructive possession of cash, contrary to what some jurists might assume[365]. Rather, it constitutes a Ḥawāla transaction: the buyer refers the seller to the bank for payment. The bank acts as agent (Muḥāl ʿalayh) delivering funds on behalf of the buyer (Muḥīl) to the seller (Muḥāl).

The same applies to **bills of exchange**. AAOIFI Sharīʿa standards stated:
"A bill of exchange is a form of Ḥawāla if the beneficiary is a creditor of the drawer. The drawer is the transferor (Muḥīl) who orders the paying bank to pay a specific sum to the beneficiary (Muḥāl). The paying party is the Muḥāl ʿalayh (payer)[366]."

Thus, if the drawee (payer) honors the bill, the drawer is released from liability; if not, the drawer remains indebted.

---

[363] AAOIFI Sharīʿa standards: No. 7, Ḥawāla.
[364] Mughni al-Muhtaj by Al-Shirbini: Vol. 2, p. 255.
[365] For example, AAOIFI Sharīʿa Standards (No. 16 'Commercial Paper') stated: "The receipt of a banker's cheque, a certified cheque, or any cheque legally treated as certified constitutes constructive possession of the amount written on it."
[366] AAOIFI Sharīʿa Standards: No, 7. (Ḥawāla).

Important Point

Ḥawāla arrangements may intersect with other contractual relationships, as financial dealings are often interconnected. Nonetheless, this study remains confined to the specific relationships under discussion. When examining the relationship between the cardholder, the merchant, and the issuing bank, this analysis does not extend to other links — such as those between the merchant and the acquiring bank (the bank that processes the merchant's transactions), or between the banks and the card networks (e.g., Visa or Mastercard).

3. Discounting of commercial papers

In some cases, a holder of commercial paper transfers it to a bank before its maturity date in exchange for immediate cash, minus a certain amount (the discount). Scholars have differed regarding its ruling[367]:

- Some prohibit it entirely, viewing it as either a **sale at a discount** or **a loan with interest (Riba)**.
- Some permit it, interpreting it as a combination of **loan plus agency fee** or **a Ḥawāla transaction**.

In practice, the bank provides an immediate, discounted cash advance to the holder of a commercial paper, then recovers the full amount of the face value upon the instrument's maturity. Whether collected directly from the endorser or through an intermediary, the additional gain constitutes **Riba (interest)**.

For this reason, the International Islamic Fiqh Academy has ruled: *"Discounting commercial paper is not permissible in Sharīʿa, because it amounts to a transaction involving Riba*[368]*."*

For further clarification: when the holder of a commercial paper receives a sum of money from the bank, he refers the bank — by endorsing the paper — to a payer who settles the amount on his behalf. Suppose the bank pays 10,000

[367] See: Al-Mu'amalat al-Maliyah Asalah wa Mu'asarah by Al-Dubyan: Vol. 13, p. 623.
[368] International Islamic Fiqh Academy: 1992, Resolution: 64.

dirhams but receives 10,200 dirhams in return; the extra amount (200 dirhams) constitutes Riba.

To sum up, as long as the Muḥāl ʿalayh (payer) is simply acting as an agent (wakīl) for the Muḥīl (transferor), any excess collected by the bank in discounting is attributable to the original debtor's obligation. Whether payment is made directly or through an agent, the surplus remains **Riba** — agency does not change the underlying nature of the transaction.

Section Three:
Contemporary Applications of Guarantees (LG as a Model)

Modern applications of **Ḍamān** (guarantee) include documentary credits and letters of guarantee (LGs). These instruments are essential banking tools that reduce risk in commercial transactions by providing payment and performance assurances. This section, however, focuses on the **letter of guarantee**, as understanding its true nature helps clarify the juristic nature of other forms of guarantees.

There are several types of letters of guarantee, such as:

- Preliminary Letter of Guarantee,
- Performance Guarantee, and
- Advance Payment Guarantee.

Every LG involves three parties: the **applicant**, the **bank**, and the **beneficiary**.

This section examines:

- How to classify and adapt letters of guarantee in Sharīʿa terms.
- Whether the guarantor's payment to the beneficiary creates a loan relationship.
- Whether it is permissible to charge a commission for issuing LGs.

Topic 1: Opinions on Letters of Guarantee

1. Classification of LGs

Modern jurists disagree on how to classify and regulate LGs. These differences mainly stem from the factual understanding of the issue and its surrounding evidence, which directly affects rulings.

- **LG as Wakāla (Agency):**

Dr. Al-Siddīq Al-Dharīr: *"The LG, whether covered or uncovered, falls under Kafāla (guarantee) in both name and meaning*[369]*."*

[369]Buhuth Mukhtarah fi al-Tamweel al-islami – Khidab al-Daman by Dr. Al-Siddiq Muhammad Al-Amin Al-Dharir: p. 259.

Dr. Sami Hamoud: *"A letter of guarantee is an authorization for an agent to pay a specific amount to a beneficiary upon demand, whether or not there is a debt*[370]*."*

- **LG as Ḍamān or Rahn (Pledge):**

Dr. Walid bin Hadi: *"The stronger opinion is that a letter of guarantee is Ḍamān; but if it is covered, it becomes a Rahn (pledge)*[371]*."*

The Permanent Committee for Scholarly Research and Ifta: *"A bank acts as a guarantor (Dāmin) for its customer (applicant) by issuing a guarantee to a beneficiary, in exchange for a fee*[372]*."*

- **LG as Ḍamān or Wakāla (Agency):**

The International Islamic Fiqh Academy: *"If an LG is uncovered, it is Ḍamān/Kafāla. If covered, the relationship between the applicant and the bank is Wakāla (agency) with or without a fee. However, toward the beneficiary, it remains Kafāla*[373]*."*

2. Charging a Fee for the Guarantee

Jurists also disagree on whether it is permissible to charge a fee for Kafāla or Ḍamān:

Classical positions:

Masa'il Imam Ahmad and Ishaq ibn Rahawayh: "If a person guarantees against payment of a thousand dirhams, Ahmad disapproved, but Ishaq said, *'Whatever he gives him is permissible*[374]*.'"*

Al-Mawardi: *"If the guarantee is given in return for remuneration, it is invalid, which opposes the view of Ishaq ibn Rahawayh*[375]*."*

---

[370] Majallat Majma' al-Fiqh al-Islami (Letter of Guarantee by Dr. Sami Hamoud): Issue No. 2, Vol. 2, p. 1154.
[371] Usool Dabd al-Mu'amalat al-Maliyah by Dr. Walid bin Hadi: p. 370.
[372] Fatawa al-Lajnah al-Da'imah Lilbuhuth al-Ilmiyyah: Vol. 13, p. 304.
[373] International Islamic Fiqh Academy: 1985, Resolution: 12.
[374] Kitab of Masa'il Imam Ahmad and Ishaq ibn Rahawayh: Vol. 2, p. 176.

Contemporary positions:

The International Islamic Fiqh Academy: *"Kafāla is a benevolent contract. It is impermissible to take a fee for issuing guarantees because, if the guarantor pays the amount, any benefit would be like loan-generated profit, which is forbidden*[376]*."*

Other jurists disagree, arguing that this payment is not a loan. Sheikh Ahmed Ali said: *"The guarantor is not a lender; therefore, charging a fee does not fall under the prohibition of the Prophetic ḥadīth: 'every loan that brings a benefit is Riba*[377]*.'"*

Dr. Sami Hamoud: *"If LG is based on agency, charging a fee is permissible, as agency can be for a fee*[378]*."*

Professor Musa Abdul Aziz Shahada and Dr. Ali Muhammad Abu Al-Ezz: *"The bank may charge a commission for issuing an LG. What is not allowed is charging interest on any amount paid on behalf of customers*[379]*."*

From the foregoing, it is evident that jurists differ on whether a fee may be charged for the LG. This divergence arises from their varying interpretations of its legal characterization — whether it constitutes a guarantee (ḍamān), an agency (wakāla), a pledge (rahn), or a loan when payment is made. The following topic examines this issue in detail, demonstrating that the LG is grounded in wakāla (agency), not qarḍ (loan).

[375] Al-Hawi Al-Kabir by Al-Mawardi: Vol. 6, p. 443.
[376] International Islamic Fiqh Academy: 1985, Resolution: 12.
[377] Majallat Majma' al-Fiqh al-Islami: Issue No. 2, Vol. 2, pp. 1138-1139.
[378] Majallat Majma' al-Fiqh al-Islami: Issue No. 2, Vol. 2, p. 1125.
[379] 33rd Al-Baraka Symposium (2011) – Research by Professor Musa Abdul Aziz Shahada and Dr. Ali Muhammad Abu Al-Ezz: p. 290.

Topic 2: LG Involves Agency, Not a Loan

Although jurists agree that Ḍamān (guarantee) is, in principle, a valid transaction established by ḥadīth and consensus — as stated by al-Ghazālī[380] — some argue that when the guarantor pays the beneficiary, the amount **becomes** a loan owed by the guaranteed party — a view that is incorrect under Sharīʿa principles. Likewise, most banks mistakenly classify this transaction as a loan. In reality, it cannot be regarded as a loan for at least one key reason: a loan (qard) requires the borrower to take possession of the amount, whereas in this case, the payment is made directly to a third party — the beneficiary — without the guaranteed party ever taking possession.

To examine what is valid and what is not, consider the following scenario. Suppose that A guarantees an amount owed by B to C, and subsequently pays C. If we ask, "Is this guarantee valid?" the answer is, "Yes, by ḥadith and consensus." If we then ask, "How should the amount paid be classified?" the response is, "It is a qarḍ (loan)." A third question then arises: "Is this a valid qarḍ?" The answer, based on this reasoning, must be "No," because a loan requires the borrower's possession, whereas in this case, the amount was handed over to a third party.
The majority of juristic authorities — particularly in the chapter on qarḍ (loan) — affirm the invalidity of this transaction if it is classified as a loan, on the basis that the borrower did not take possession of the funds. For instance:

- *Al-Mawsūʿah al-Fiqhiyyah: "Ownership of a loan requires the borrower's possession[381]."*
- *Murshid al-Hiran: "Borrowed money becomes property of the borrower only by possession[382]."*
- Ibn Qudamah: *"Ownership of a loan is established by possession[383]."*
- Al-Ghamrawi: *"The borrower owns the loan by possession, even if unused[384]."*

[380] Al-Wasit by Abu Hamid al-Ghazali: Vol. 3, p. 231.
[381] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 30, pp. 231-232.
[382] Murshid al-Hiran (Hanafi school) by Muhammad Qadri Pasha: Article 687, p. 113.
[383] Mughni Ibn Qudamah: Vol. 6, p. 431.
[384] Al-Siraj Al-Wahhaj by Al-Ghamrawi: p. 211

- *AAOIFI Sharīʿa Standards:* "The borrower owns the loaned money by possession[385]."

Thus, when this reasoning is applied to LGs, and the bank pays the beneficiary directly, **the applicant never takes possession of the funds**. Therefore, no valid loan arises — meaning that the misclassification affects not only the fee but also the entire amount. In reality, the bank is not a lender, nor is the applicant a borrower.

Dr. Nazīh Ḥammad emphasized:
"If a guarantor pays a debt, he transfers ownership to the beneficiary, not to the applicant. After payment, the applicant owes the guarantor, but this is not a loan — it is a debt arising from agency or performance, like debts in sales, salam, ijāra, and similar transactions. Every loan is a debt, but not every debt is a loan[386]."

This statement reflects a fundamental distinction. When a person owes a debt, and another pays it on his behalf, the payer is not a lender but an **agent**, as clearly established in the books of fiqh, particularly under the chapter of *wakāla*. **Ibn Qudāmah** stated:
"When an agent pays money on behalf of his principal with permission, it is as though the principal paid it himself[387]."

Therefore: LGs Are Agency-Based, Not Loan-Based

We now turn to *wakāla* (agency) to demonstrate its close interrelation with *ḍamān* (guarantee).

Meaning of Kafāla and Ḍamān:
Lexicons such as Lisān al-ʿArab[388], al-Mawsūʿah al-Fiqhiyyah[389], as well as juristic works like Sharḥ al-Talqīn[390], affirm that both terms mean

[385] AAOIFI Sharīʿa Standards: No. 19, AL-Qarḍ.
[386] Qadaya Fiqhiyyah Mu'asarah by Dr. Nazih Hammad: p. 308.
[387] Mughni Ibn Qudamah: Vol. 7, p. 213.
[388] Lisān al-ʿArab by Ibn Manzur: Harf kafāla.
[389] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 34, p. 287.

"guarantee." Likewise, the International Islamic Fiqh Academy, in discussing letters of guarantee (LG), states: *"Joining one dhimma to another in what is required now or in the future is referred to as ḍamān or kafāla (guarantee) in Islamic fiqh*[391]."

This meaning naturally extends to the **broader concept of agency**, as al-Rāghib al-Aṣfahāni stated: *"Every guarantor is an agent, but not every agent is a guarantor*[392]*."* Al-Zajjaji[393] and Al-Sarakhsi[394] made similar statements.

Contemporary jurists also refer to the concept of agency when defining or explaining a letter of guarantee. For example, the International Islamic Fiqh Academy stated: *'If the letter of guarantee has cover, the relationship between the applicant and the bank is one of **wakāla** (agency)*[395]*."*

Dr. Sāmī Ḥamūd said, *"The bank's right of recourse in LG transactions aligns with **agency** principles: the principal reimburses the **agent** for legitimate payments*[396]*."*

Practical Example:

- Applicant (A) needs an LG for a project.
- Bank (B) issues the LG to the beneficiary (C).
- A (the applicant) fails to complete the project, B pays C, then A reimburses B.

This can be analyzed through the tadāyun balance (debt-flow scale). The key difference lies in whether the bank's payment is attributed to A (as agent) or treated as the bank's own loan to C.

Tadāyun balance (debt flows):

---

[390] Sharḥ al-Talqīn by Al-Māzirī: Vol. 3, p. 135.
[391] International Islamic Fiqh Academy: 1985, Resolution: 12.
[392] Mufradat Alfadh al-Quran by Al-Raghib al-Asfahani: Harf "wakāla".
[393] Ishtiqaq Asma' Allah by Abu al-Qasim al-Zajjaji: p. 136.
[394] Al-Mabsut by al-Sarakhsi: Vol. 20, p. 3.
[395] International Islamic Fiqh Academy: 1985, Resolution: 12.
[396] Majallat Majma' al-Fiqh al-Islami (Letter of Guarantee by Dr. Sami Hamoud): Issue No. 2, Vol. 2, p. 1123.

If treated as a wakāla (valid):

- Debt 1: A owes C.
- Debt 2: C owes A (amount received).
    - These two debts cancel each other out.
- Debt 3: A owes B (agency debt).
- Debt 4: B owes A (money received).
    - These two debts cancel each other out.

Result: Because the mutual debts settle cleanly, letters of guarantee function as agency contracts rather than loans.

If treated as a loan (invalid):

- Debt 1: A (applicant) owes C (beneficiary) — failure debt.
- Debt 2: C owes B (bank) — possession debt (no wakāla).
  These debts do not offset each other.

Result: Because the debts remain imbalanced and cannot cancel out, treating the LG as a loan leads to an invalid and impractical structure.

- Debt 1 remains because no wakāla existed — the bank didn't pay "on behalf of" A.
- Debt 2 must also be settled separately, as the bank has its own claim against C.
  To unwind this, A must first pay C, then C must refund B — an unnecessarily long and convoluted path.

Topic 3: Charging a Commission for LGs

Since LGs are **agency-based**, charging a commission for them is permissible — a view affirmed by many contemporary jurists.

The Sharīʿa Board of Dubai Islamic Bank, after reviewing key resolutions (Dubai 1979, Al-Azhar Fatwa, and the Fiqh Academy Resolution of 1985),

concluded: *"*Charging a fee for LG is permissible, as it involves both agency and guarantee, and serves the public interest[397]*."*

Al-Muʿāmalāt al-Māliyah: Aṣālah wa Muʿāṣarah stated:
"Shaykh ʿAbd al-Raḥmān al-Saʿdī, Shaykh ʿAlī al-Khafīf, Shaykh Nazīh Ḥammad, Shaykh ʿAbdullāh bin Maniʿ, Dr. Muḥammad al-Shanqīṭī, and others permit charging a commission for LGs[398]."

Muḥammad Bāqir emphasized:
"A Letter of Guarantee strengthens contractual obligations; therefore, charging a commission for it is justified[399]*."*

How Guarantees Function in Contracts
Guarantees appear in contracts in different forms, depending on whether they arise naturally within the transaction or are explicitly added.

1. Indirect guarantee: such as sales

- The seller guarantees the commodity until delivery.
- The buyer guarantees payment on the agreed date.

2. Personal guarantee: Such as when the Prophet (peace be upon him) borrowed[400] coats of mail from Safwan ibn Umayya and guaranteed them[401].

3. Third-party guarantee: For example, if the seller requires an additional guarantor besides the buyer — who already guarantees payment — this constitutes linking one *dhimma* to another[402]. Similarly, contractors often request banks to issue LGs. This arrangement benefits both the project owner and the bank (a service fee).

[397] Fiqh al-Mu'amalat - Group of Authors: Vol. 4, pp. 13-14 (Fatwa No. 13).
[398] Al-Mu'amalat al-Maliyah Asalah wa Mu'asarah by Al-Dubyan: Vol. 12, pp. 490-491.
[399] Bank al-Laribawi (Interest-Free Bank) by Muhammad Baqir: p. 131.
[400] See: Al-Bayan fi Madhhab Al-Shafi'i: (If 'Ariyah is guaranteed): Vol. 6, p. 510.
[401] Sahih Sunan Abi Da'ud: Grade: Sahih (Albani): Vol: 2, p. 388.
[402] Umdat al-Huffaz fi Tafsir Ashraf Al-Alfaz by Ahmad ibn Yusuf: Dhimma means guarantee (joining one Dhimma to another).

Voluntary vs Paid Service

A **volunteer** may offer services without charge, as endorsed by the ḥadīth: "Helping a man with his mount — lifting him onto it or hoisting up his belongings onto it — is an act of charity[403]."

Likewise, a voluntary guarantor (ḥamīl) who assumes liability without intending recourse is performing a charitable act and, therefore, is not entitled to a fee or reimbursement. The juristic consensus, as reported by Ibn al-Mundhir, regarding the impermissibility of charging a fee for a guarantee[404], applies to this case. Al-Rāfiʿī affirmed: "The characterization of the guarantee as a donation applies only when there is no intention of recourse[405]."

A **non-volunteer** may charge a fee, as indicated by the ḥadīth: "Give the worker his wage before his sweat dries."

Isḥāq ibn Rāhawayh explicitly permitted a guarantee for a fee, saying: "If a person asks another to act as his guarantor for a thousand dirhams, it is ḥalāl (permissible)[406]."

In conclusion, one may either volunteer such work or charge a fee for it, similar to Sharīʿa advisory firms that guarantee sound counsel for their clients, whether voluntarily or for compensation.

Fee structures:

- The fee may be a lump sum (e.g., 20,000 dirhams) or a percentage (1%, 2%, etc.).
- Percentage is often fairer because it scales with the project size. For instance, if the project value is only 20,000 dirhams but the bank charges 20,000 as a lump sum, the applicant effectively gains nothing and bears an unjust loss.
- In all cases, if the bank pays on behalf of the applicant, it cannot charge **interest** on that amount[407].

[403] Sahih Muslim: No. 2335.
[404] Al-Ishraf by ibn Al-Mundhir: Vol. 6, p. 230
[405] Fath al-'Aziz by Al-Rafi'i: Vol. 5, p. 147.
[406] Kitab of Masa'il Imam Ahmad and Ishaq ibn Rahawayh: Vol. 2, p. 176.

A key juristic statement is made by Dubyan bin Muhammad, who said:
"Whoever forbids a guarantee with a fee because of the existence of a guarantee without a fee is like someone who forbids an agency with a fee simply because an agency without a fee is permissible, or like someone who forbids the permissibility of a lease simply because ʿAriyah (a loan) is permissible, or like someone who forbids the permissibility of a sale simply because a gift is permissible[408]."

Summary:

- A letter of guarantee involves an agency, not a loan.
- Whether voluntary or paid, the guarantor's role is a service analogous to that of an agent performing tasks on behalf of a principal.
- Charging interest on any amount paid is strictly prohibited.

[407] 33rd Al-Baraka Symposium (2011), Research on Cash Withdrawal Fees, Letters of Guarantee, and Letters of Credit — Prof. Musa Abdul Aziz Shahada and Dr. Ali Muhammad Abu Al-Ezz, p. 290.
[408] Al-Mu'amalat al-Maliyah Asalah wa Mu'asarah by Al-Dubyan: Vol. 4, pp. 173-175.

Chapter Five:
Manāfiʿ (Benefits / Usufruct)

- **Section One: The Juristic Reality of Manfaʿah**
- **Section Two: Priority Rights**
- **Section Three: Ijāra (Leasing / Hiring)**

Section One:
The Juristic Reality of Manfaʿah

Manfaʿah (Usufruct / Benefits) holds significant importance in Islamic economics. It serves as a criterion for distinguishing what is ḥalāl from what is ḥarām; on this basis, wine and gambling were prohibited. Allah Almighty said: *"They ask you about wine and gambling. Say, 'In them is great sin and [yet, some] benefit for people. But their sin is greater than their benefit.'"* (Al-Baqarah: 219).
People are likewise judged with reference to this principle. The Prophet (peace be upon him) said: *"The best of people is the one who benefits people most."* (Ṣaḥīḥ al-Jāmiʿ: 3289).

Classical jurists did not dedicate a separate chapter exclusively to *Manfaʿah* (usufruct/benefits). Instead, they discussed it in various contexts, most notably under the chapter of *Ijāra* (lease). For example, fiqh books describe the lease contract as being based on the *Manfaʿah* (use or benefit) of a specific or described asset.

Manfaʿah may relate to *Māl* (wealth/property), such as residing in a house, or to human services, such as teaching knowledge. *Zād al-Mustaqniʿ* lists among the conditions of a valid *Ijāra* contract:

"Knowing the *Manfaʿah* (benefit/usufruct), such as living in a house, human service, or teaching knowledge[409]."

This highlights the significance of *Manfaʿah*: it is found in both people and property. However, jurists have differed on whether *Manfaʿah* itself should be classified as *Māl*. This section mainly examines that issue in detail.

Topic 1: Opinions on Manfaʿah

All jurists agree that physical objects are *Māl* (wealth/property), but they differ on whether *Manfaʿah* — the benefit derived from people or property — is also *Māl*.

[409] Zaad al-Mustaqni' by al-Hajjawi: p. 126.

- **Majority view**: *Manfaʿah* is *Māl*, because the intended purpose of things lies in their benefits, not merely in their physical substance.

- **Hanafi view**: *Manfaʿah* is not *Māl* in the true sense[410].

Al-Khatib al-Shirbini (a Shāfiʿī scholar) said:
"*Manfaʿah* is not *Māl* in the true sense, but a kind of expansion and metaphor, as it cannot be physically controlled. If a person acknowledged owing *Māl* and then explained that he meant a *Manfaʿah*, it would not be accepted[411]."

Al-Sarakhsi in *al-Mabsut* stated:
"*Manfaʿah* is *Māl* in one respect, but it is not subject to zakāt[412]."

This disagreement has important juristic implications, particularly with respect to zakāt and theft. For example, if someone unlawfully takes a manfaʿah, is he considered to have stolen Māl? If manfaʿah is not classified as Māl, the applicable punishment would be taʿzīr (discretionary), not ḥadd al-sariqah (the fixed penalty for theft).

This section addresses these issues and weighs them on the mizān, as Allah commanded: *"If you disagree over anything, refer it to Allah and the Messenger, if you believe in Allah and the Last Day. That is better and most suitable for final determination."* (al-Nisāʾ: 59). The Prophet (peace be upon him) said: *"I have left you upon a clear path; its night is like its day*[413]*."*

Topic 2: Benefits in Persons and Property

We will examine whether *Manfaʿah* is *Māl* from two angles:

1. Exchanging *Māl* for *Manfaʿah* differs from exchanging *Māl* for *Māl*.
2. Services provided by people are *Manfaʿah*, not *Māl*.

[410] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 14, p. 29.
[411] Mughni al-Muhtaj - Al-Shirbini: Vol. 2, p. 6.
[412] Al-Mabsut by Al-Sarakhsi: Vol. 2, p. 196.
[413] Sahih Sunan Ibn Majah: Grade: Hasan, (Albani): No. 5, Vol. 1, p. 19.

1. Manfaʿah vs Māl

Jurists differentiate between exchanging property for property (*Māl* for *Māl*) and exchanging property for benefit (*Māl* for *Manfaʿah*).

- Renting a house provides *Manfaʿah* to the tenant.
- Hiring a worker involves paying money (*Māl*) for a service, which is *Manfaʿah* rather than *Māl*, because a person is not property.

Sheikh Ali al-Khafif said:
"People can be hired, but they cannot be treated as *Māl* (property)[414]."

Similarly, al-Tuwaijri explained:
"*Manfaʿah* may be the usufruct of an object (like living in a house or riding a car) or the benefit of a person's work (like a builder, blacksmith, tailor, or servant)[415]."

Jurists provide many supporting statements that distinguish between Māl and Manfaʿah:

- **Abu al-ʿAbbas Ahmad ibn Yusuf:** *"Sale is the exchange of Māl for Māl, or Māl for Manfaʿah*[416]*."*

- **Sheikh Ibn 'Uthaymeen:** *"A contract may involve three bases: specific property (Māl Muʿayyan), debt (Māl fi dhimmah), or benefit (Manfaʿah). These combinations produce nine possible cases*[417]*."*

- **Al-Mawsuʿah al-Fiqhiyyah:** *"A settlement exchanging Māl for Māl is a sale; exchanging Māl for Manfaʿah is a lease*[418]*."*

---

[414] Ahkam al-Mu'amalat al-Sharīʿa by Sheikh Ali Al-Khafif: p. 29
[415] Mawsu'at al-Fiqh al-Islami by Muhammad ibn Ibrahim Al-Tuwaijri: Vol. 3, p. 529.
[416] Umdat al-Huffaz fi Tafsir Ashraf al-Alfaz by Abu al-Abbas Ahmad ibn Yusuf: Baab B, Bayʿ.
[417] Al-Sharh Al-Mumti' by Ibn ʿUthaymīn: Vol. 8, p. 98.
[418] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 27, p. 327.

- **Al-Shirazi**[419] **and Ahmad al-Hamawi**[420]**:** *"A settlement based on Māl for Manfaʿah is a lease, with the same rights and options as any lease."*

- **Sheikh Ibn ʿUthaymīn**[421] and **Sheikh ʿAlī al-Khafīf**[422] also discussed this matter, differentiating between Māl and Manfaʿah in their rulings.

From these texts, it is clear that exchanging *Māl* for *Manfaʿah* is not the same as exchanging *Māl* for *Māl*.

Someone with Manfaʿah but no Māl

Knowledge and experience are *Manfaʿah*, not *Māl*. Hence, a knowledgeable person without wealth is still considered poor. The Prophet (peace be upon him) said of Muʿawiyah: *"As for Muʿawiyah, he is poor — he has no Māl*[423]*."*

Hadith distinction between Māl and Manfaʿah

The Prophet (peace be upon him) said: *"Three things follow the deceased: his family, his Māl, and his deeds. Two return, and one remains: his deeds remain with him*[424]*."* This shows that actions (deeds, manfaʿah) are distinct from *Māl*.

Mahr as Māl or Manfaʿah

The Qur'an requires that marriage[425] involve *Mahr* from the husband's *Māl* (al-Nisāʾ: 24). However, if one cannot provide *Māl*, he may offer *Manfaʿah* — as illustrated in the hadith where a man married by teaching the Qur'an he had memorized (Sahl ibn Saʿd)[426]. Knowledge is a benefit (*Manfaʿah*), not *Māl*.

The Prophet (peace be upon him) further clarified:

---

[419] Al-Muhadhdhab fi al-Fiqh by Al-Shirazi: Vol. 3, p, 288.
[420] Ghams Uyun al-Basair by Ahmad al-Hamawi: Vol. 3, p, 77.
[421] Al-Sharh Al-Mumti' by Ibn ʿUthaymīn: Vol. 8, p. 97.
[422] Ahkam al-Mu'amalat al-Sharīʿa by Sheikh Ali Al-Khafif: p. 504
[423] Sahih Muslim: Hadith: 3697.
[424] Sahih Al-Bukhari: Hadith: 6514.
[425] See: Tafsir Al-Tabari: Surat Nisa', 24-25.
[426] Sahih Sunan Abi Da'ud: Grade: Sahih (Albani): Vol. 1, pp. 589-590. Hadith: 2111.

"The world is for four people: one with Māl and knowledge… one with knowledge but no Māl… one with Māl but no knowledge… and one with neither[427]*."*
This explicit distinction confirms that knowledge is *Manfaʿah*, not *Māl*.

Dr. Muhammad Rateb al-Nabulsi affirms this point: *"Exchange is not limited to Māl (property or money); rather, there is also the exchange of Māl for Manfaʿah (benefits), which is not an exchange of Māl for Māl*[428]."

2. Manfaʿah Provided by Humans (Services)

In modern economics, goods are tangible items, while services are intangible benefits. Classical Islamic jurists did not use these terms; instead, they referred to **"Māl"** (property, wealth) and **"Manfaʿah"** (benefit). Thus, *Māl* and *Manfaʿah* are distinct categories.

Manfaʿah is broader than service. It includes benefits derived from both Māl (property) and human effort. Allah Almighty says:

- *"And for you in them (livestock) are numerous benefits."* (Al-Mu'minun 23:21)
- *"And We sent down iron, in which is severe strength and benefits for people."* (Al-Hadid 57:25)

Services are a **subset of Manfaʿah** — benefits provided by people to one another. Allah Almighty says:

"Do they distribute the mercy of your Lord? We have apportioned among them their livelihood in this worldly life and raised some of them above others in rank so that they may make use of one another in service." (Az-Zukhruf 43:32)

This Qur'anic verse indicates how people naturally benefit one another through service. Imam Abu al-Barakat al-Nasafi commented:

[427] Sahih Sunan Al-Tirmidhi: Grade: Sahih (Albani): Vol. 2, pp. 534-535, Hadith: 2325.
[428] Al-Bai wa al-Shira (Bahth) by Dr. Muhammad Rateb Al-Nabulsi: p. 4.

"It means people may coexist and attain their benefits — one gives his Māl (money), and the other provides service[429]*."*

Even pre-Islamic Arabic poetry reflected this reality: people continuously provide services to one another, often without conscious intent.

Every service is a benefit, but not every benefit is necessarily a service. The advantages obtained through services such as banking, communication, trade, engineering, and medical care are referred to as "service benefits." Below are illustrative examples drawn from the Qur'an, Sunnah, and classical scholarship:

1. Administration:

Administration is a form of *manfaʿah* (service/benefit). Managers and administrators provide essential services by ensuring that organizations operate efficiently, implementing policies, and guiding staff toward their goals.

In Islamic jurisprudence, both the *Ajeer* (employee) and the *Muḍārib* perform administrative services in managing wealth. The Prophet ﷺ and Abu Bakr (RA) themselves hired a professional guide during the migration, as ʿĀʾishah (RA) reported: "Allah's Messenger and Abu Bakr hired a man from Banu al-Dil as an expert guide[430]." In this arrangement, one party provides *Māl* (money), and the other provides *manfaʿah* (service).

2. Engineering Works:

Engineering is a form of *manfaʿah* (service/benefit) that draws upon scientific knowledge, logic, and experience. Ibn Khaldūn observed: "Engineering enlightens the mind and organizes thought, because all its evidences are arranged and precise. Practicing its measurements trains the intellect to be orderly and resistant to error[431]."

[429] Madarik At-Tanzil wa Haqaiq At-Ta'wil by Abu Al-Barakat Abdullah bin Ahmad Al-Nasafi: Zukhruf: 32.
[430] Sahih AL-Bukhari: Hadith: 2264.
[431] Muqaddimah Ibn Khaldun: p. 539.

Engineering works (services) can be contracted through *Istisnāʿ* (manufacture/construction) or *Ijāra* (leasing). The Qur'an mentions several prophets performing or commanding engineering works:

- Prophet Nūḥ (Noah) built the Ark by divine instruction: "Construct the ship under Our observation and Our inspiration." (Hud 11:37). The Ark is Māl (a physical asset), whereas the act of constructing it (the work itself) constitutes Manfaʿah (service or benefit).
- Prophet Ibrāhīm (Abraham) raised the foundations of the Kaʿbah with his son: (Al-Baqarah 2:127)
- Prophet Dawūd (David) was taught to make coats of mail: (Al-Anbiya 21:80)
- Dhul-Qarnayn built a great barrier to block Gog and Magog: (Al-Kahf 18:96–97)

These prophetic examples constitute real evidence that skilled works and services — forms of manfaʿah — are recognized in Sharīʿah as lawful and valuable, advancing human civilization and infrastructure.

3. Transportation:
Moving people, goods, and animals is another form of Manfaʿah. When Allah commanded Nūḥ to load believers and creatures onto the Ark, He said:

"Embark therein. In the name of Allah is its course and its anchorage." (Hud 11:40–41). This is a clear Qur'anic reference to transportation as a service.

4. Education:
Education is a noble and enduring benefit (Manfaʿah). The Prophet ﷺ said: *"The best among you is the one who learns the Qur'an and teaches it*[432]*."*

The Prophet's mission itself was to convey revelation, teach the Book, and impart wisdom: (Al-Jumuʿah 62:2)

[432] Sahih al-Bukhari: Hadith: 5027.

Education strengthens society, advances economies, and cultivates righteousness. Allah says: *"Say, are those who know equal to those who do not know?"* (Az-Zumar 39:9)

5. Healthcare:

Healthcare is a vital service. When physicians diagnose illnesses or treat patients, they are providing *manfaʿah* (benefits) through skilled service. Prophet ʿĪsā (Jesus), by Allah's permission, healed the blind and the lepers — *"…and I heal the blind and the leper, and I bring the dead to life by Allah's leave."* (Āl ʿImrān 3:49)

This prophetic example affirms the legitimacy and virtue of medical services as recognized *manfaʿah* in Sharīʿa; seeking medical treatment is recommended for the patient. The Prophet ﷺ said: *"Seek treatment, O servants of Allah, for Allah has not created a disease except that He has also made its cure, except for old age*[433]*."*

6. Advisory Services:

Advisory works — whether financial, agricultural, or strategic — are also *manfaʿah* (benefits). Prophet Yūsuf (Joseph) provided agricultural policy advice to Egypt, saying:
"You will plant for seven years consecutively; and what you harvest, leave in its spikes, except for a little of that which you eat." (Yūsuf 12:47).

This constitutes legitimate *manfaʿah* in Sharīʿah. He (Prophet Yūsuf) later assumed administrative responsibility under royal authority (Yūsuf 12:54–59), demonstrating the importance of appointing knowledgeable and trustworthy individuals to manage wealth and resources — an enduring principle for modern institutions.

From the above examples:

- Services are *Manfaʿah* but not *Māl*.
- Property like sheep is *Māl*, while shepherding is *Manfaʿah*[434].
- Knowledge is *Manfaʿah*, not *Māl*, as the Prophet said:

[433] Sahih Sunan Ibn Majah: Grade: Sahih, (Albani): Hadith: 2789, Vol. 3, p. 158.
[434] Sharh Zad al-Mustaqni by Dr. Muhammad al-Shinqiti: No. 2262.

> *"The prophets did not leave behind dinars or dirhams, but left knowledge*[435]*."*

Finally, during Hajj, Allah says pilgrims "witness benefits for themselves" (al-Hajj: 27–28), showing that these benefits — both social and spiritual — fall under *Manfaʿah*[436].

Conclusion

Jurists, whether explicitly or implicitly, distinguished between **Māl** (property/wealth) and **Manfaʿah** (benefits/services). While Manfaʿah may arise from objects or effort and can serve as valid consideration in contracts — even as a dowry — it does not share the same juristic status as tangible Māl.

Topic 3: Zakāt and Theft of Manfaʿah

1. Theft of Benefits (Manfaʿah)

In Islam, theft is a serious crime condemned for its harmful impact on individuals and society. Islamic law emphasizes the protection of **Māl** by prescribing **Hadd al-Sariqah** (the fixed penalty for theft) under certain conditions. Allah Almighty says:

"As for the thief, male or female, amputate their hands as a recompense for what they committed, as a deterrent from Allah. And Allah is Exalted in Might and Wise." (al-Ma'idah: 38)

The Qur'an also highlights the consequences of unlawfully taking benefits. Allah states: "Except one who steals a hearing and is pursued by a clear burning flame." (al-Hijr: 18)

Hearing is a **Manfaʿah** (a benefit), and this verse shows that its theft is considered a crime deserving punishment.

[435] Sahih Sunan Ibn Majah: Grade: Sahih, (Albani): Hadith: 183, Vol. 1, p. 92.
[436] See: Majmu' Fatawa wa Rasa'il Ibn Uthaimeen: Vol. 24, p. 7.

Theft of Māl vs Theft of Manfaʿah — Practical Examples

Document example:
Suppose a man is selling a document containing valuable information. Three men enter while he is distracted:

1. One reads the document and memorizes its content.
2. Another photographs the document.
3. A third takes the entire document and leaves.

The first two stole **Manfaʿah** (benefits, information), while the third stole **Māl** (the physical document). In the first two cases, the document remains in the seller's possession, so **Taʿzīr** (discretionary punishment) applies. In the third case, the document itself is gone, so **Hadd al-Sariqah** is applied.

Computer data example:
If a thief copies data without permission, he steals Manfaʿah; the original data remains, so Taʿzīr applies. If he steals the whole computer (along with the data), he has stolen Māl, and Hadd al-Sariqah applies.

Mobile recharge card example:
If a thief steals a card whose value reaches the nisāb, Hadd al-Sariqah applies because he stole Māl. But if he only takes the PIN and uses it, he steals Manfaʿah — the card itself remains with its owner, so Taʿzīr applies.

Solar power example:
If a thief steals solar panels or batteries, Hadd al-Sariqah applies because he stole Māl. But if he merely taps into the system and uses the electricity, he has stolen Manfaʿah, and Taʿzīr applies.

2. Zakāt on Benefits

Allah has made Zakāt obligatory on **Māl** (property), not on benefits. Allah says: *"Take charity (zakāt) from their Māl."* (al-Tawbah: 103)

The Prophet ﷺ said to Muʿādh when sending him to Yemen:

"… tell them that Allah has enjoined upon them a charity to be taken from their rich and given to their poor. If they obey you in that, then beware of taking the best of their Māl…[437] *"*

Jurists clarified that zakāt is due on Māl, not on Manfaʿah.

Al-Sarakhsi said: *"Benefits are Māl in one respect, but they are not a subject for zakāt*[438]*."*

Al-Khatib al-Shirbini stated in *Mughni al-Muhtaj*: *"Benefits are not Māl in the true sense*[439]*."*

Practical Examples

Milk in udders:
Milk inside camels or cows is considered Manfaʿah and is not subject to zakāt. But once milk is extracted and stored for sale, it becomes Māl, and zakāt applies.

Modern benefits such as computer software, electricity stored in batteries, and mobile phone credit are manfaʿah and not subject to zakāt directly.

Electricity in batteries
Electricity stored in batteries is considered manfaʿah, and no zakāt is due on it. But if the batteries themselves are sold as trade goods, zakāt becomes obligatory once they reach the nisāb. If electricity is provided as a service, zakāt is due on the income received rather than on the stored energy itself.

Computer programs on discs
Programs themselves are considered manfaʿah and are not subject to zakāt. However, if the discs containing the programs are held for sale, zakāt is due on their value once they reach the nisāb and a year has passed — not on the programs themselves.

[437] Sahih al-Bukhari: Hadith: 4347.
[438] Al-Mabsut by Al-Sarakhsi: Vol. 2, p. 196.
[439] Mughni al-Muhtaj - Al-Shirbini: Vol. 2, p. 6.

Mobile phone credit:
Credit (used for calls, texts, and data) is considered manfaʿah and is not subject to zakāt. However, if credit vouchers or recharge cards are held for trade, zakāt is due on their value once they reach the nisāb and a year has passed — not on the credit itself.

Manfaʿah Distinction Extends to Other Areas

The Māl–Manfaʿah distinction extends beyond zakāt and theft to include sale, lending, gifting, and even ribā (usury). Imam al-Nawawī stated: *"There is no usury in benefits at all*[440]*."* Moreover, certain rights in Manfaʿah may be reserved.

Intellectual works: Words are Manfaʿah. If someone buys a book, such as *Al-Minhaj* by Imam al-Nawawi, he may not change its wording — these rights remain with the author. Likewise, the words of Allah (the Qur'an) are inviolable:

- *"No change can there be in the Words of Allah."* (Yunus: 64)
- *"No one can change the Words of Allah."* (al-Anʿam: 115)

Physical property: If someone buys a building (māl), he is free to alter it or repurpose the land as he wishes. **Manfaʿah, however, is different:** if someone buys copyrighted software, his use is restricted by the rights reserved to its owner.

Key Conclusion

- **Benefits (Manfaʿah)** are distinct from **Māl (property)**.
- **Zakāt** is obligatory on Māl, not on Manfaʿah.
- **Ribā** (usury) applies to Māl, not to Manfaʿah.

[440] Rawdat al-Talibin by al-Nawawi: Vol. 4, p. 251.

Section Two: Priority Rights

Rights are considered benefits (manfaʿah). When someone buys food, a car, or a computer, he acquires the right to consume, ride, or use it. These are tangible assets; however, the subject matter may be intangible — such as software — representing an abstract benefit that can be bought, sold, or licensed independently of any physical substance.

Introductory Examples

1. One's Original Seat

Leaving one's seat temporarily does not mean forfeiting the claim to it, though one may waive this right in favor of someone else. Abu Huraira reported that the Messenger of Allah (peace be upon him) said:

"Whoever gets up from where he has been sitting and comes back to it has more right to it[441]."

2. Right of Preemption

Another example is the right of *Shufʿa* (preemption). Jabir ibn Abdullah reported:

"The Prophet (peace be upon him) ruled that the right of Shufʿa is valid in all undivided property. But if boundaries are set and separate roads made, there is no preemption[442]."

This highlights that the right of preemption is a recognized priority right for co-owners or partners.

3. Priority Subscription Rights

In modern finance, priority subscription rights (*preemptive rights*) allow existing shareholders to purchase newly issued shares during a capital increase, preserving their ownership share. These rights can often be traded separately — a shareholder may sell them if he chooses not to exercise them.

[441] Sahih Muslim: Hadith: 5689.
[442] Sahih al-Bukhari: Hadith: 2257.

Jurists, however, have differed on whether such *abstract rights* can be sold or transferred.

Topic 1: Opinions on Abstract Rights

Some early jurists prohibited exchanging abstract rights for compensation, while others allowed certain forms. Sheikh Muhammad Taqi al-Uthmani explains:

"The issue did not appear broadly in the time of the ancient jurists, so their books do not contain a detailed answer about the rights that exist today. But they did differ about many rights in their era, permitting some forms of transfer and forbidding others[443]."

For example, some allowed selling access rights — such as a permanent right-of-way — because it grants a lasting benefit.

Al-Khatib al-Shirbini noted:
"Some define a sale as a financial exchange contract in which the buyer acquires permanent ownership of property or **usufruct**. This includes selling rights-of-way and similar **benefits**, but excludes leases, since the lessee does not acquire a permanent usufruct[444]."

Contemporary Discussions

- **Dr. Saleh bin Zaben Al-Marzouqi** disagreed with Sheikh Muhammad Al-Mukhtar Al-Salami on whether priority rights may be sold:

  "Sheikh Al-Salami permits selling the right of priority, but I consider it impermissible because it is not an asset of intrinsic value — merely an abstract right[445]."

- **International bodies** such as the Sharīʿa Standards[446] and the International Islamic Fiqh Academy[447] have recognized some abstract

[443] Buhuth fi Qadaya Fiqhiyah Muʿasirah by Muhammad Taqi 'Uthmani: Vol. 1, p. 74.
[444] Mughni al-Muhtaj by Al-Shirbini: Vol. 2, p. 6.
[445] Sharikat al-Musahamah by Dr. Saleh bin Zaben Al Marzouqi: p. 392.
[446] AAOIFI Sharīʿa Standards: No. 42. Financial Rights.

rights — trade names, trademarks, or commercial goodwill — as financial rights that may be transferred for consideration if free of deception or ambiguity.

Topic 2: Trading and Substitution of Priority Rights

1. Priority Subscription Rights

Before discussing share rights, consider this analogy:

Example: Priority in a Queue
In a long queue, an outsider may pay someone in the line to take his place. This falls under what jurists describe as *al-iʿtiyāḍ ʿan al-ḥuqūq* (taking compensation in exchange for rights). It is not a sale of tangible Māl but a **substitution of rights (istibdāl)**: the first person waives his priority in return for consideration, and the substitute acquires that right. Though intangible, this priority has value because it enables the substitute to deal with the merchant and thus to obtain goods sooner.

If the queue operates with tickets, however, the holder may sell his ticket outright. In this case, it becomes a **sale contract**: the first person sells a tangible asset — the ticket — and transfers ownership to the buyer, who seeks not the physical paper but the priority it represents.

Application to Subscription Rights
Similarly, priority subscription rights allow a shareholder to subscribe to newly issued shares before outsiders. For example, if a company with 100 shares issues 100 more, a shareholder with 10 shares has the right to buy 10 of the new shares — or sell this right to someone else.

Buying a subscription right does not mean buying shares directly. It merely gives the buyer first access to them — like buying a queue ticket, not for the ticket itself, but for priority access to the goods.

[447] International Islamic Fiqh Academy: 1988, Resolution: 43.

2. Bargain, Earnest Money, and Auction

Bargain Rights

When a buyer is negotiating with a seller, no one else may interfere until the negotiation is concluded. Abu Hurayrah reported that the Prophet (peace be upon him) said:

"No man should bargain over what his brother is already bargaining for[448]."

Ibn Abd al-Barr explained that such interference violates the first buyer's right of priority[449]. If he waives that right in exchange for payment, this is permissible — the right belongs to him. Ibn Rushd added that if someone offers money to a bargainer to relinquish his claim, he must pay it, whether or not the sale is finalized[450].

Auctions

By contrast, an auction is open to all — the item is sold to the highest bidder[451], and no single buyer holds priority until the bidding ends.

Earnest Money (Arbūn)

Earnest money gives a buyer priority to purchase within a set period. If he proceeds, the amount is considered as part of the price; if not, he forfeits it.
The juristic ruling, however, depends on when the payment is made:

- **If paid before the sale contract,** it secures priority and functions as *arbūn*.
- **If paid after the sale contract,** it does not constitute earnest money but is treated as a direct part of the purchase price and must be refunded upon cancellation of the contract.

This demonstrates that earnest money (ʿArbūn) has its own distinct legal characteristics. Dar al-Ifta al-Urduniyah[452] and the International Islamic Fiqh

[448] Sahihi Muslim: Hadith: 3458.
[449] Al-Tamhid by Ibn Abd al-Barr: Vol. 5, p. 298.
[450] Al-Bayan wa Al-Tahsil by Ibn Rushd: Vol. 8, p. 293.
[451] Sahihi Al-Bukhari: Al-Muzayadah.
[452] Fatawa Dar al-Ifta Al-Urdunia: Fatwa No. 2788. See also: Majmu Fatawa wa Maqalat Mutanawwa'ah - Syeikh Abdul Aziz Bin Baz: Vol. 19, p. 63.

Academy[453] affirm that earnest money belongs to the seller (and is zakatable by him), whether or not the sale occurs[454].

3. Things Bought as a Means

Some items are purchased not for themselves but as tools to access a benefit:

- **Travel tickets** confirm a passenger's right to board a flight[455]. If the airline cancels, the ticket holder is refunded.
- **Lecture tickets** grant entry to an event. If the event is canceled, the buyer is compensated.
- **Phone cards** and prepaid top-ups serve as instruments for accessing communication services (Manfaʿah). According to AAOIFI[456], they function as a lease between the provider and the user. If the company fails to deliver the service, the customer is refunded.

Different transactional forms must be considered. For example, a queue or waiting ticket differs: if the seller cannot deliver the goods, the buyer usually has no claim against anyone (neither the merchant nor the ticket seller). In contrast, an airline or telecom provider guarantees its service contract, making these rights stronger and more enforceable.

Conclusion

These examples demonstrate that many modern rights fall under manfaʿah — benefits or entitlements rather than tangible māl. Clarifying this juristic distinction eliminates much of the ambiguity surrounding rulings on rights, such as priority claims, by establishing whether they should be categorized as māl or manfaʿah.

[453] International Islamic Fiqh Academy: 2005, Resolution: 143.
[454] See: AAOIFI Sharīʿa standards: Arboun (Earnest Money): No. 35 (Zakat).
[455] See: Fatawa Islam Web: "If the airline ticket is non-resalable, the passenger must comply". Fatwa No.: 239860.
[456] AAOIFI Sharīʿa Standards: No. 38 (3. Provision of Online Access Services).

Section Three:
Ijāra (Leasing / Hiring)

Ijāra is a significant contract widely applied across various economic activities. It refers broadly to both leasing and hiring arrangements. In a **leasing** contract, the lessor grants the lessee the right to use an asset in exchange for rent. In **hiring**, the contract involves an employer engaging a worker to perform specific tasks in return for a salary or wage.

Ijāra, in its contemporary context, involves a person (the service provider) granting temporary use of an asset, such as property or equipment, or offering skilled expertise to a client in exchange for payment. Several Sharīʿa texts address this arrangement, including the Qur'anic verse: *"O my father, hire him. Indeed, the best one you can hire is the strong and the trustworthy."* (Qasas: 26). Aisha (may Allah be pleased with her) also narrated, *"Allah's Messenger (peace be upon him) and Abu Bakr hired a man from the tribe of Bani-Ad-Dil as an expert guide*[457]*."*

This section explores key juristic differences regarding:

- whether *Ijāra* should be regarded as a form of sale;
- whether the lessee is permitted to sublet the leased property; and
- whether the owner may sell it to a third party other than the lessee.

Topic 1: Opinions on the Nature of Ijāra

Jurists differ on whether Ijāra constitutes a form of sale. Two main opinions are found:

- Opinion 1: Ijāra is not a sale
- Opinion 2: Ijāra is a sale of usufruct (manfaʿah)

[457] Sahih AL-Bukhari: Hadith: 2264.

Opinion 1: Ijāra is not a sale

Al-Khatib al-Shirbini (a Shafiʿi scholar) stated: *"Since the tenant does not acquire the right of permanent usufruct, Ijāra is not a sale*[458]*."*

Ibn Hazm said in *Al-Muhalla*:

"Ijāra (leasing/hiring) is not a sale. If it were a sale, then hiring a free person would not be permissible. Yet those who classify Ijāra as a sale still permit the hiring of a free person — a clear contradiction. They agree that renting is merely the use of a leased asset whose benefits have not yet been created, while it is not permissible to sell what has not yet been created[459]*."*

Sheikh Dubyan bin Muhammad further emphasized:

"Ijāra contract is an independent contract that has its own characteristics, effects, and rulings. Just because Ijāra shares some characteristics with a sale does not mean it is an absolute sale[460]*."*

Opinion 2: Ijāra is a sale of usufruct (manfaʿah)

By contrast, some jurists argued that *"Ijāra is the sale of benefits," as recorded in* al-Dhakhīrah[461]. Likewise, Ibn Qudāmah said: *"Ijāra is a type of sale because it is a transfer of ownership from one party to the other. It is a sale of benefits, and benefits are like real assets*[462]*."*

This view, however, raises an important difficulty: if *Ijāra* is essentially a sale of benefits that have not yet been created and cannot be possessed at once, and if selling something nonexistent is prohibited, how can *Ijāra* be permissible?

[458] Mughni al-Muhtaj by Al-Shirbini: Vol. 2, p. 6.
[459] Al-Muhalla by Ibn Hazm: Vol. 7, p. 3.
[460] Al-Mu'amalat al-Maliyah Asalah wa Mu'asarah by Al-Dubyan: Vol. 9, p. 20.
[461] Al-Dhakhirah by Al-Qarafi: Vol. 5, p. 371.
[462] Mughni Ibn Qudamah: Vol. 8, p. 7. See also: Al-Fiqh al-Manhaji: "Ijāra is a sale of benefits." Vol. 6, p. 152.

Topic 2: Ijāra on the Mīzān (Scale)

Ijāra is a means of obtaining **Manfaʿah** (benefit or usufruct). A person may own an item, such as an animal or a car, and wish to rent it out. In this case, both the asset and its benefits belong to the lessor. But what if the intended benefit comes from another source?

Practical example

Suppose a lessor rents out a radio to someone who wants to listen to programs for a specific period. The programs themselves come from the broadcasting company, not from the radio owner. If the lessor does not own the broadcasting company, does he have the right to lease out the radio?

If Ijāra were truly a "sale of benefits," this lease would be invalid — because the lessor does not own the programs being enjoyed. Yet no jurist prohibits renting a radio. It is evident from this that Ijāra is not merely a sale of benefits, as some have argued; rather, it is an independent contract with its own rulings, as Al-Khatib al-Shirbini[463] and Sheikh Dubyan bin Muhammad[464] explain. The radio scenario reminds us of the debate over immediate salam (ḥāl), where those who rejected it were challenged with the example of purchasing river water from a tanker owner, highlighting that juristic reasoning must account for practical realities, not merely theoretical constructs.

Availability as a Requirement for Leasing

Ijāra does not require that the lessor personally own the intended benefit. What matters is that the benefit be available and permissible. Therefore, as long as radio programs in the example are available and lawful to access, the lessor may rent out the radio to anyone wishing to listen. Jurists discussed some issues related to this topic (benefits), such as renting a water well[465]. In what follows, we will discuss two key points:

[463] Mughni al-Muhtaj by Al-Shirbini: Vol. 2, p. 6.

[464] Al-Mu'amalat al-Maliyah Asalah wa Mu'asarah by Al-Dubyan: Vol. 9, p. 20.

[465] See: Al-Aziz Sharh al-Wajeez fi al-Fiqh al-Shafi'i: Vol. 6, p. 92, and Al-Sharh al-Mumti' by Ibn ʿUthaymīn: Vol. 10, p. 32.

- Ijāra as an independent contract
- Ijāra vs sale

1. Ijāra as an Independent Contract

Financial transactions encompass many types of agreements, including Ijāra, each with its own nature, complexity, and purpose. Allah Almighty says: *"O you who have believed, fulfill the contracts."* (Ma'ida: 1). This command covers every permissible transaction — business deals, promises, covenants with Allah — each governed by its own Sharīʿa rules to ensure fairness and justice.

Analogical reasoning (Qiyas)
Picture a broad street with many lanes, each representing a different type of contract — sale, gift, loan, lease, and so on. Should the sale lane and the lease lane be treated as a single lane? Clearly not; otherwise, the Prophetic statement would apply: *"You have narrowed a very vast matter."* (Ṣaḥīḥ al-Bukhārī: 6010).

Confusing Ijāra with Sale is like confusing the sun and the moon. Both may share features (both rise and set), yet they remain distinct. Some acts of worship are connected to the sun (like prayer times), while others are connected to the moon (like fasting and Hajj). Likewise, males and females are both human, yet each is distinct. Allah says, *"The male is not like the female."* (Āl ʿImrān 3:36). Copper and gold are both metals that share some similarities, but ultimately, they are distinct. Truth and lying are forms of speech, yet truth is commanded while lying is forbidden. Sales and riba are two types of transactions; sales are lawful, but riba is unlawful.

Some jurists, in the context of ijāra, erred by claiming that it is "contrary to analogy," having likened it to the sale of something nonexistent. This resembles one who mistakes iron for wood and, when the axe fails to cut it, concludes that the result is "contrary to analogy." In reality, the phrase itself exposes the initial misassumption (*qiyās fāsid*).

Likewise, sale and ijāra must be treated as distinct contracts. Sharīʿa clearly differentiates between them: selling what one does not have is prohibited, whereas ijāra is permissible.

Ijāra was even permitted for previous nations, as in Surah Al-Qasas (26): *"O my father, hire him. Indeed, the best one you can hire is the strong and the trustworthy."* Other verses also refer to paid services:

- *"If you had willed, you could have taken payment for it."* (Kahf: 77)
- *"So may we assign to you an expenditure so that you make a barrier between us and them?"* (Kahf: 94)
- *"And if they breastfeed for you, then give them their payment."* (Talaq: 6)

When Sharīʿa permits Ijāra, it is in harmony with sound analogy — not contrary to it. The Messenger of Allah (peace be upon him) said: *"I do not forbid what is permissible, nor do I permit what is forbidden*[466]*."*

Just as people wear different clothes for different purposes — shirts, trousers, turbans, coats — people also use different contracts: sales, salam, Istisnāʿ, loans, gifts, wills, endowments, deposits, guarantees, Ijāra (leasing/hiring), partnerships, and more. Each type of contract serves its own role without contradicting reason or law.

2. Ijāra vs Sale

Example: A man sells books and also teaches for a fee[467]. Selling a book decreases his inventory; teaching does not diminish his own knowledge. Likewise, leasing property allows temporary use, while selling transfers permanent ownership.

[466] . Sahih al-Bukhari: Hadith: 3110.

[467] See: Al-Bayan fi Madhhab al-Shafi'i: (Teaching the Quran for a fee), Vol. 7, p. 323.

Al-Hattab noted: *"According to Quraysh's definition and agreed upon by scholars, the term 'sale' refers to that which has left the seller's possession and entered the possession of the buyer*[468]*."*

Let us now highlight more concrete differences between leasing and selling:

- **Zakāt**: Ijāra prevents zakāt from being due on the leased item, whereas selling requires zakāt on merchandise for sale. Shaykh Ibn Bāz stated: *"There is no Zakāt on private cars and taxis... Zakāt is only due on merchandise prepared for sale. If the vehicle is ready for sale, then Zakāt is due on it*[469]*."*
- **If the item is damaged or destroyed**: In a sale, once the buyer takes possession, ownership of the property transfers to him. If it is destroyed, he bears the loss. In Ijāra, if the lessee takes possession of the leased asset and it is later destroyed without negligence, the loss is borne by the lessor. This is because taking possession of the leased property does not necessarily mean taking possession of its benefit[470].
- **Transfer of ownership**: Ownership in a sale is perpetual, whereas in Ijāra, the right to use the usufruct is temporary. Al-Khaṭīb al-Shirbīnī said: *"Since the tenant does not acquire the right of permanent usufruct, the Ijāra is not a sale*[471]*."*
- **Prohibited wording**: In Ijāra, the lessor must not say, *"I sold you its benefit for a year for such-and-such."* Al-Khaṭīb al-Shirbīnī affirmed: *"The more correct view is to prohibit such wording. This is neither a sale nor a valid Ijāra. Using the term 'sale' makes the contract invalid, because ownership in a sale is not time-bound*[472]*."*

[468] Mawahib al-Jalil by al-Hattab: Vol. 6, p. 4.
[469] Fatawa Noor Ala Al-Darb by Sheikh ibn Baz: Vol. 15, pp. 262-263.
[470] Al-Muhadhdhab by Al-Shirazi: Vol. 3, p. 542.
[471] Mughni al-Muhtaj by Al-Shirbini: Vol. 2, p. 6.
[472] Mughni al-Muhtaj by Al-Shirbini: Vol. 2, p. 429.

Dr. Muhammad Rateb al-Nabulsi summarizes this distinction well: *"Exchange is not limited to Māl (property, money); rather, there is the exchange of Māl for Manfaʿah (benefits), which is not an exchange of Māl for Māl*[473]*."*

Sheikh Dubyan bin Muhammad also emphasized: *"Ijāra is an independent contract that has its own characteristics, effects, and rulings. Just because Ijāra shares some characteristics with a sale does not mean it is an absolute sale*[474]*."*

Topic 3: Sublease

If someone rents a property and then sublets it before taking possession, two questions arise:

1. **Is subleasing before possession permissible?**
2. **If yes, may the property be sublet for the same rent or for more?**

These questions primarily arise from the juristic discussion of whether a lease is treated as a 'sale of usufruct.' If the Ijārah is assumed to be analogous to a sale, then — according to some jurists — the rule that a sold item may not be resold before possession would similarly apply to subleasing an asset before taking possession of it.

1. Opinions on Subleasing Before Possession

Jurists have differed on whether a tenant may sublease a property before taking possession. Dr. Hamed Mira summarized three views:

- **First opinion – prohibition:** This is the view of the Hanafis, Shafiʿis, and one opinion in the Hanbali school.
- **Second opinion – restricted permission:** Reported from Abu Hanifa and Abu Yusuf: it is permissible in the case of immovable property.

[473] Al-Bai wa al-Shira (Bahth) by Dr. Muhammad Rateb Al-Nabulsi: p. 4.
[474] Al-Mu'amalat al-Maliyah Asalah wa Mu'asarah by Al-Dubyan: Vol. 9, p. 20.

- **Third opinion – full permission:** This is held by some Hanafis, the Maliki school, some Shafiʿis, and is regarded as the most correct opinion in the Hanbali school[475].

Classical sources illustrate the debate:
Al-Durr al-Mukhtar: "The lessee may sublet the leased property after taking possession of it. Some also said it is permissible before possession if it is leased to someone other than the original lessor[476]."

Ibn Qudamah: "As for renting out the property before taking possession, there are two opinions: one forbids it to anyone other than the lessor, and the other permits it[477]."

Al-Shirazi: "The lessee may sublet the property if he has taken possession of it. Before possession, there are three views: (1) impermissible, like selling an item before taking possession; (2) permissible, since the contract concerns benefits, and receiving the property does not necessarily mean receiving the benefit; (3) permissible only to the original lessor, not to others[478]."

2. The Validity of Sublease

As noted earlier, some jurists treated leasing by analogy with sale. On that basis, they prohibited subleasing before possession, just as resale of property is not permitted before possession.

However, others distinguished between possession of property and possession of its usufruct. This distinction is stronger, based on the following points:

- Leasing does not transfer ownership of the property to the lessee, only its use.
- Taking possession of the leased item does not necessarily mean the benefit has been received. For example, if the property is destroyed

[475] Sukūk Al-Ijāra by Dr. Hamed Mira: pp. 133-138.
[476] Al-Durr al-Mukhtar Sharh Tanweer Al-Absasr (Hanafi school): p. 589.
[477] Al-Mughni by Ibn Qudama: Vol. 8, p. 55.
[478] Al-Muhadhdhab by Al-Shirazi: Vol. 3, p. 542.

before use, the rent is waived regardless of whether possession occurred.

- Therefore, the restriction on selling before possession does not apply to leasing.

Juristic statements:

Al-Bayān fī Madhhab al-Shāfiʿī records that Abū al-ʿAbbās Ibn Surayj al-Baghdādī (a leading Shāfiʿī scholar) held subleasing valid even before possession, because taking possession of the property is different from taking possession of the benefit (usufruct)[479].

Al-Buhuti: "It is valid to rent a rented property to its lessor or another party, even if the lessee has not taken possession[480]."

Dr. Hamed Mira concludes:
"The most correct opinion is that it is permissible. This is the view of the Hanafi school, the Maliki school, some Shafiʿis, and the most correct opinion in the Hanbali school… The basis is that transactions are permissible unless prohibited, and since leasing concerns usufruct, not the property itself, subleasing does not require prior possession[481]."

Sheikh Dubyan bin Muhammad adds:
"The most correct view is that it is permissible to sublet a leased property before the tenant takes possession[482]."

3. Subleasing the Property for More

Jurists also discussed whether the tenant may rent out the property for more than his own rent.

[479] Al-Bayan fi Madhhab al-Shafi'i: Vol. 7, p. 354.
[480] Kashshaf al-Qina' by Al-Buhuti: Vol.3, p. 566.
[481] Sukūk al-Ijāra by Dr. Hamed Mira: p. 136
[482] Al-Mu'amalat al-Maliyah Asalah wa Mu'asarah by Al-Dubyan: Vol. 13, p. 410.

Those who reject:

- *Al-Ṭaḥāwi:* "After possession, the lessee should not rent it for more than his own rent. If he does, the excess is given to charity. But if he made any addition to the property, the increase is permissible[483]."

Those who permit (preferred view)

- *Al-Nawawi:* "It is permissible to sublease for the same rent or more. This is the view of Ahmad, Al-Shafiʿi, Abu Thawr, and Ibn al-Mundhir, and reported from Ataʾ, Al-Hasan, and Al-Zuhri[484]."
- *Al-Mudawwana al-Kubrā:* "According to Mālik, it is permitted for one who rents a property to rent it out for more[485]."
- AAOIFI Sharīʿa Standards: "A lessee may sublet the property unless the owner stipulates otherwise, for a rent that is the same, lower, or higher, payable immediately or deferred[486]."

4. Who Has the Right to Sublease?

The right to sublease belongs to the lessee, not the lessor. The lessee may sublease at the same, lower, or higher rent — unless forbidden by the lease agreement or the owner. *Al-Shirazi* explicitly permits subleasing at any rate[487].

Practical example:

- The owner of an aircraft leases it to an airline company.
- The airline then sells tickets to passengers.

Here, the owner is the first lessor, and the airline becomes the second lessor. The only requirement is that the described aircraft be ready on time and that the passengers show up for the flight.

Conclusion

[483] Mukhtasar Al-Tahawi: p. 129.
[484] Al-Majmu' by Al-Nawawi: Vol. 15, p. 309.
[485] Al-Mudawwana Al-Kubra of Imam Malik: Vol. 11, p. 157.
[486] AAOIFI Sharīʿa Standards: No. 9 (Ijāra).
[487] Al-Muhadhdhab by Al-Shirazi: Vol. 3, p. 542.

- **Ijāra is distinct from sale**; therefore, the prohibition on selling an item before possession does not apply to subleasing, which is permissible both before and after possession.
- **It is permissible to charge the same rent, less, or more**, subject to the lease terms and conditions.

Topic 4: Selling a Leased Property

If an owner sells a leased property to a third party, several questions arise: Is the sale valid? Does it require the tenant's consent? Can the property be taken from the tenant and handed to the buyer? And who receives rental payments for the remaining lease term? These issues are examined in this section.

1. Opinions on Selling a Rented Property

Jurists differed regarding the validity of selling a leased property to someone other than the tenant. Dr. Abdullah Al-Ammar summarized their views in three opinions:

- **First opinion:** The sale is valid (held by the Malikis, most Shafiʿis, and the Hanbali madhhab).
- **Second opinion:** The sale is absolutely impermissible (held by the Hanafi school, some Shafiʿis, and some Hanbalis).
- **Third opinion:** The sale is permissible but non-binding without the tenant's permission (a Hanafi view)[488].

Ibn Qudamah said: *"If someone rents out a property and then sells it, the sale is valid. Ahmad and Al-Shafiʿi (in one opinion) stated this, whether the buyer is the tenant or someone else*[489]*."*

The view prohibiting such a sale would imply that Sukūk of leased assets could not be traded, which contradicts widespread juristic practice.

[488] Al-Ijāra ala al-Ijāra by Abdulla Musa Al-Ammar: pp. 9-13.
[489] Mughni Ibn Qudamah: Vol. 8, p. 48.

Another issue arises: if the lessor sells the property (or gives it as a gift), must it be taken from the tenant and delivered to the buyer? Al-Shirbini explains two opinions:

- According to the stronger view, the sale is valid even without the tenant's consent, because a lease does not prevent a sale.
- According to another view, it is invalid because the property cannot be delivered while the tenant is using it. Al-Shirbini adds (as a reconciliation): *"The property is taken from the tenant and delivered to the buyer, then returned to the tenant so he may continue to benefit from it until the end of the lease term*[490]*."*

The following section addresses this issue directly, without requiring the property to be taken from the tenant, delivered to the buyer, and then returned to the tenant.

2. The Validity of Selling or Donating a Leased Property

An owner may sell or donate leased property without affecting the lease terms and conditions or the tenant's rights. This rule illustrates that possession of the property and possession of its benefit are distinct. During the lease term, the leased property remains a trust-based holding (amānah) in the tenant's hands.

The hadith of Ibn ʿUmar provides direct evidence for this ruling. While Ibn ʿUmar was using a camel borrowed from ʿUmar, the Prophet (peace be upon him) purchased it from ʿUmar, then immediately gifted it to Ibn ʿUmar[491]. The Prophet became the owner through a valid sale, while Ibn ʿUmar retained his right of use under a valid contract. This shows:

- The owner may sell[492] or gift his property to a third party, even while it is under lease or loan (ʿAriya). This principle also extends by analogy to other trust-based holdings. Ibn Qudāmah, citing this hadith,

[490] Mughni al-Muhtaj by Al-Shirbini: Vol. 2, p. 462.
[491] Sahih Al-Bukhari: Hadith: 2115.
[492] See: Mughni al-Muhtaj by Al-Shirbini: Vol. 2, p. 462.

concludes: "It is likewise permissible to sell property held in trust or Muḍāraba assets in the hands of a Muḍārib[493]."

- The tenant's rights remain unaffected by such a sale or gift[494].

Juristic evidences

Al-Nawawi stated: *"It is permissible to sell property in the possession of the borrower or renter[495]."*

Al-Shirbini confirmed in *Mughni al-Muhtaj*: *"If the lessor sells or gifts the leased property to someone other than the lessee, it is valid according to the stronger opinion[496]."*

Dr. Muhammad Sultan al-ʿUlama likewise affirmed: *"The owner may sell rented property absolutely, and the sale is valid even without the tenant's permission. This is the Maliki view, the stronger Shafiʿi opinion, and the Hanbali madhhab[497]."*

Furthermore:

- The sale does not annul the lease. (*Al-Mawsūʿah al-Fiqhiyyah[498]; Al-Fiqh al-Manhaji[499]; Dr. Muhammad Ali Al-Qari[500]*)
- The buyer may not take the property from the tenant until the lease expires. (*Al-Tuwaijri[501]; Al-Tahawi's Mukhtasar[502], Abu Hamid Al-Ghazali[503]*)

---

[493] Mughni Ibn Qudamah: Vol. 6. p. 190.

[494] Al-Dasuqi stated that if borrowed property is gifted to a third party, it remains with the borrower until the loan term ends, after which the donee (mawhūb lahu) receives it." Hashiyat al-Dasuqi: Vol. 4, pp. 104-105.

[495] Al-Majmu' by Al-Nawawi: Vol. 9, p. 321.

[496] Mughni al-Muhtaj by Al-Shirbini: Vol. 2, p. 462.

[497] Ahkam Idni Al-Insan by Dr. Muhammad Abd al-Rahim Sultan al-Ulama: Vol. 1, pp. 378-381.

[498] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 1, p. 274.

[499] Al-Fiqh Al-Manhaji (Shafi'i): Vol. 6, p. 156.

[500] Khasa'is Haq al-Intifa' by Dr. Muhammad Ali Al-Qari: p. 14.

[501] Mawsu'at al-Fiqh al-Islami by Muhammad ibn Ibrahim Al-Tuwaijri: Vol. 3, p. 531.

[502] Mukhtasar Al-Tahawi: p. 131.

[503] Al-Wajeez by Abu Hamid Al-Ghazali: Vol. 1, p. 414.

- If the lessor dies, ownership transfers to the heirs, who must honor the lease until its term ends. Ibn Sirin said, *"The family has no right to evict the tenant until the term is complete*[504]*."*

Dr. Abdullah Al-Ammar summarizes: *"The new owner replaces the previous owner in dealing with the tenant*[505]*."* This principle is codified in AAOIFI Sharīʿa Standard No. 9 on Ijāra: *"If the buyer did not know about the lease, he may rescind the sale. If he knew and accepted, he replaces the previous owner in entitlement to rent for the remaining period."*

Conclusion

- **The sale or donation of leased property is valid.**
- **The lease continues unchanged** until its term expires.
- **The buyer (or heirs) step into the original owner's position** regarding rental collection and obligations.
- **The tenant's right of use is protected** — neither the buyer nor the heirs may evict the tenant before the lease ends.

Topic 5: Entitlement to Rent

This topic addresses two key questions:

- Does the lessor own the rent (*ujrah*) immediately by contract, or does ownership occur gradually?
- If the leased property is sold, to whom does the rent belong — the seller or the buyer?

1. Does the lessor own the rent by contract?

Jurists differ on whether rent becomes owned outright at the time of the lease contract, or only as the lease period unfolds.

[504] Sahih al-Bukhari: Kitab al-Ijāra.
[505] Al-Ijāra ala al-Ijāra by Abdulla Musa Al-Ammar: pp. 9-13.

View 1 – Rent is owned by contract

- *Ibn Rajab* stated: "The tenant owns the usufruct (benefits), and the lessor owns the rent once the contract is concluded[506]."
- *Al-Shirbini* said: "Just as the lessor owns the rent by contract, the lessee owns the usufruct, as evidenced by the permissibility of disposing of it in the future[507]."

View 2 – Rent is owned gradually

- ***Ibn Abidin*** wrote: "The lessor does not own the rent by lease contract, because it is based on benefits, which occur gradually[508]."
- ***Ibn ʿUthaymīn*** supported this view and criticized the contrary opinion of Ibn Qudāmah, stating: "Ibn Qudamah said that if the lessor rents his property for years, he owns the rent from the time of the contract. However, this is doubtful as the lessor gradually owns the rent, not at once. If the rented property is destroyed, the lease is terminated, and the lessor is not entitled to the rent. As the lease period passes, the lessor earns the rent little by little[509]."

Debt: Practical implications

From a debt or accounting perspective, a leasing company does not record the entire rent for the full lease term (say, a 10-year lease) as a receivable upfront; rather, it records rent gradually as it becomes due — because the debt corresponds to the delivery of the service (the right to use the property), not the mere signing of the contract.

A simple example is a **taxi meter**, where payment accrues gradually rather than all at once. This aligns with the opinions of Ibn ʿUthaymīn, Ibn Abidin[510], and others that rent is owned progressively.

---

[506] Al-Qawa'id al-Fiqhiyyah by Ibn Rajab: p. 89.
[507] Mughni al-Muhtaj by Al-Shirbini: Vol. 2, p. 430.
[508] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 32, p. 286.
[509] Al-Ta'liq ala Al-Kafi by Ibn ʿUthaymīn: Vol. 3, p. 168.
[510] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 32, p. 286.

What if the tenant possesses the property but does not use it?

If the lessee takes possession of the leased asset (e.g., a vehicle) and retains it until the lease term expires, the entire rent must be paid even if the property remains unused. *Al-Rafiʿi* said:

"If a tenant takes possession of a leased property (such as a house or an animal) and retains it until the lease term ends, the rent is due for the entire period, regardless of whether the tenant used the property[511]."

Rent due dates and liability

- If the lease period passes and rent has not been paid, it becomes a debt owed by the tenant.
- If the period has not passed, the future rent is not yet a debt and may be adjusted.

Ibn Taymiyyah said: "The rent does not become due before its term[512]."

AAOIFI Sharīʿa Standards likewise state: "In a rental contract, rent becomes due after the property is handed over for the tenant's use and during the lease term, not immediately upon signing[513]."
AAOIFI further adds[514] that future rentals may be amended, while unpaid past rentals become a fixed debt to the lessor, confirming that rent is not owned outright at contract signing.

2. Who is entitled to the rent if the leased property is sold?

If the leased property is sold to a third party, the sale contract remains valid. *Ibn Qudāmah* affirms: "If someone rents out a property and then sells it, the

[511] Al-Muharrar by Al-Rafi'i: p. 235.
[512] Majmu' Fatawa Ibn Taymiyyah: Vol. 30, p. 155.
[513] AAOIFI Sharīʿa Standards: No. 9 (Ijāra).
[514] AAOIFI Sharīʿa Standards: No. 9 (Ijāra).

sale is valid. Ahmad and al-Shāfiʿi (in one of his opinions) held this, whether the buyer is the tenant or another party[515]."

However, a key question arises: Who is entitled to the future rents — the seller or the buyer? Some jurists state: "The rent belongs to the seller," while others say: "It belongs to the buyer." Before examining the juristic texts, the correct conclusion must be: "It belongs to the buyer" — otherwise, the buyer would be wronged.

Example

Implications if the rent is assigned to the seller:

If the owner leases the property for ten years at twenty million dirhams, then sells it to someone other than the tenant, under the second view:

- the **tenant** benefits from the property's use,
- the **seller** takes the rent,
- but the **buyer** gains neither rent nor use during the lease term — an unreasonable outcome.

We now turn to the juristic opinions on this issue.

Al-Buhūtī vs Ibn Qudāmah

- *Al-Buhūtī* (preferred opinion): The **buyer** of the leased property is entitled to the rent from the date of sale.
- In contrast, Ibn Qudāmah (al-Mughnī[516]) notes another opinion that the **seller** retains entitlement because he "owns it by contract[517]."

From this, it becomes clear that some jurists argue that the seller retains entitlement (to the entire rent) on the basis that he, as the lessor, owns the rent by virtue of the contract. According to this view, the lessor may record a debt owed by the lessee as soon as the lease contract is signed. However, this misconception becomes evident if the leased property is destroyed — the lessor cannot claim any debt, since no debt was owed for the remaining future rent.

[515] Mughni Ibn Qudamah: Vol. 8, p. 48.
[516] Mughni Ibn Qudamah: Vol. 8, p. 50.
[517] Kashshaf Al-Qina' by Al-Buhuti: Vol. 4, p. 32.

Juristic evidences

Scholars unanimously agree that if the leased property is destroyed before use, the tenant is not liable for the rent. Likewise, if the property is damaged during the lease term, rent is owed only for the period during which the tenant benefited.

***Ibn Taymiyyah*:** "If the property is destroyed, the rent (or its portion) is void[518]." He further noted: "By **consensus** of the scholars, if the benefits are interrupted before they are received, the rent is proportionally adjusted[519]."

***Ibn Qudamah (Al-Kafi)*:** "If the property is destroyed before any use, the tenant owes no rent. If destroyed mid-term, rent is due proportionally for the period used, and the rest is waived[520]."

***Al-Tahawi*:** "If rent is prepaid, the lessor keeps only what matches the elapsed period; the remainder must be returned if the lease ends early[521]."

This distinction applies whether the utility ends because the **property itself is lost** (e.g., a vehicle is destroyed) or its **benefit ceases** (e.g., a radio still exists but becomes useless if broadcasting stops).

Rent received in advance upon sale

Therefore, when a leasing company sells leased assets, it must transfer any rent received in advance as well as the tenant's security deposit to the buyer (the new owner), who then assumes the lessor's role regarding future lease payments. Ibn Taymiyyah affirms: "Future benefits of leased property can never be taken possession of in the present, but only as they accrue[522]." Al-Buhūtī adds: "If the buyer of the rented property is a third party, he is entitled

[518] Majmu Fatawa ibn Taymiyyah: vol. 30, p. 296.
[519] Majmu' Fatawa Ibn Taymiyyah: If the benefits are interrupted before they are received. Vol. 30, p. 155.
[520] Al-Kafi by Ibn Qudamah: vol. 2, p. 177.
[521] Mukhtasar by Al-Tahawi: p. 128.
[522] Majmu Fatawa ibn Taymiyyah: vol. 30, p. 288.

to rent from the date of sale, taking the seller's place with respect to the existing lease agreement[523]."

Summary

- As many jurists (Ibn ʿUthaymīn, Ibn ʿĀbidīn, and AAOIFI) hold, rent is not owned outright at contract signing but accrues gradually.
- Future rent is not a debt until its period arrives; past unpaid rent is a debt.
- If the leased property is sold, the buyer — not the seller — should receive rent for the remaining term.
- If benefits cease or the asset is destroyed, the tenant owes rent only for the period actually enjoyed.
- Practically, leasing companies recognize revenue over time, not all at once, and must transfer rent received in advance to the buyer of the leased asset.

[523] Kashshaf Al-Qina' by Al-Buhuti: Vol. 4, p. 32.

Chapter Six:
Mushāraka and Profit Distribution

- **Section One: Sharika (Companies)**
- **Section Two: Sharing in Profits and Output**
- **Section Three: Contemporary Applications of Sukūk**

Section One:
Sharika (Companies)

Sharīʿa devotes considerable attention to the concept of companies and highlights the principles of fairness, ethical conduct, and the avoidance of unlawful enrichment in commercial dealings. Allah the Almighty says:
"Indeed, many partners oppress one another, except for those who believe and do righteous deeds — and they are few." (Ṣād: 24)
Classical scholars examined various types of partnerships — such as ʿInān, Muḍāraba, Wujooh, and Abdān — outlining their legal rulings and clarifying their role within Islamic financial and commercial systems.
In contemporary practice, new forms of partnership have emerged, including the joint-stock company.
This section examines the nature and function of companies, with particular attention to areas of juristic disagreement, especially those related to joint-stock companies.

Topic 1: Opinions on Joint Stock Companies

Several issues have been raised regarding joint-stock companies, especially concerning the permissibility of trading in shares.

Mubarak bin Sulaiman stated:
"There are two opinions regarding the sale of shares. The first permits it — this is the view of most contemporary jurists and researchers. The second prohibits it — this is the view of Sheikh Taqi al-Din al-Nabhani[524]."

Questions also arise regarding limited liability companies (LLCs) and corporations:

[524] Ahkam al-Taʿamul fi al-Aswaq al-Maliyyah al-Muʿasirah by Mubarak bin Sulaiman: Vol. 1, p. 191.

1. Who bears liability for company debts — the company itself or its shareholders?

Some jurists hold that the company alone is responsible for its debts, with no direct liability upon individual shareholders[525]. Others maintain that shareholders, as owners of the company's assets, bear ultimate responsibility. Dr. Mubarak bin Sulaiman observed:

"A joint stock company, whether classified as a type of 'Inān, Muḍāraba, or a distinct category, remains within the general framework of partnerships, as reality itself testifies[526]."

According to this view, shareholders collectively bear the financial obligations — the dhimmah[527] — of the company.

2. Does a buyer of shares acquire a portion of the company's debts?

This issue arises when shares are sold while the company owes debts to third parties. Are such debts considered part of the share being transferred?

3. Does the shareholder actually take possession of what the shares represent?

Some jurists contend that purchasing shares does not entail direct possession of the underlying assets. Therefore, reselling the shares immediately may be viewed as analogous to selling an item before taking possession of it. The Prophet ﷺ said: *"Whoever buys food should not sell it until he takes possession of it[528]."*

---

[525] Sheikh Ali al-Khafif is among those who believe that debts and obligations can be assigned to entities other than human beings. He stated, "There is nothing in Sharīʿa that prevents imposing debts and obligations on something other than a human being." See: Bayʿ al-Dayn wa Tadbiqatuh al-Muʿasirah by Dr. Usama Hamud: Vol. 2, p. 208.

[526] Ahkam al-Taʿamul fi al-Aswaq al-Maliyyah al-Muʿasirah by Mubarak bin Sulaiman: Vol. 1, p. 188.

[527] Umdat al-Huffaz fi Tafsir Ashraf Al-Alfaz by Ahmad ibn Yusuf: Fasl: Dhal and Mim.

[528] Sahih al-Bukhari: Hadith: 2133.

This section addresses these questions and related issues in light of Sharīʿa principles. Allah Almighty said:

"And We have sent down to you the Book as clarification for all things." (Nahl: 89)

Topic 2: Shares Represent Ownership

Some scholars have questioned how trading shares can be considered valid if the buyer has not directly taken possession of the underlying assets. The answer lies in the principle of **agency (wakālah)** inherent in all types of companies.

1. Companies involve agency

In every partnership, each partner acts as an agent for the others. Shares, therefore, represent ownership in the company itself.

Al-Buhuti stated:
"In a partnership, if the partners know their respective shares, they act as agents for one another, and the term 'partnership' constitutes express permission for their actions[529]*."*

Al-Kasani stated:
"In an 'Inān partnership, each partner may buy or sell for the benefit of the company because the partnership contract includes agency. Their goal is profit, which is achieved through trade, and trade is nothing but buying and selling[530]*."*

This means that actions taken by one partner are legally attributed to all partners. For example, if a partner buys goods using company capital, ownership automatically extends to all partners because the purchasing partner acts as their agent.

[529] Al-Rawd al-Murbi by Al-Buhuti: Vol. 2, pp. 261-262.
[530] Bada'i' al-Sana'i' by Al-Kasani: Vol. 7, p. 528.

Other jurists affirm this view: ʿAbd al-Raḥmān al-Maqdisī described the **Wujooh partnership** as being founded upon agency and mutual guarantee[531]. Likewise, Muḥammad Ṣiddīq, in *al-Rawḍah al-Nadiyyah*, confirmed that one person may authorize another to borrow and trade on his behalf, sharing the profits. This resembles the Wujooh partnership, which falls under the category of authorized trade[532].

2. How agency functions in companies

As stated in *Mukhtasar Khalil*:
"Muḍāraba is an authorization (tawkīl) to trade using currency entrusted to the muḍārib, and it is not a debt upon him[533]*."*

Through this authorization (tawkīl), the company may generate profit or incur liability on behalf of the principals (owners). For example, if a muḍārib rents a warehouse for company use, the shareholders become responsible for the rent until it is paid.

Accordingly, when an employee trades using shareholders' funds, he is merely acting as a paid agent. Zufar ibn al-Hudhayl stated: *"The worker is a hired agent*[534]*."*

Because a company's assets are managed by authorized agents (whether a CEO, employees, or a Muḍārib), these assets remain in the possession of the shareholders. Hence, **buying and selling shares is permissible**, as the assets are already under their possession through agency.

ʿAbd al-Ghanī al-Ghunaymī stated: *"The agent is the origin of rights*[535]*."*

---

[531] Al-Uddah Sharh al-Umda by Abdul Rahman Al-Maqdisi (Hanbali): p. 283. Al-Lubab Sharh al-Kitab by Abdul-Ghani Al-Maydani (Hanafi) states: "In a Wujooh partnership, each partner acts as an agent for the other in their purchasing decisions." p. 329.
[532] Al-Rawdah Al-Nadiyyah by Muhammad Siddiq: Vol. 2, p. 299.
[533] Mukhtasar Khalil: p. 235.
[534] Al-Majmu' by Al-Nawawi: Vol. 15, p. 206.
[535] Al-Lubab (Sharh Mukhtasar Al-Qudoori) by Abdul Ghani Al-Maydani: p. 327.

Given the company's future potential — and although market prices naturally fluctuate due to external factors such as economic or security conditions — the valuation of shares rests not on the present value of tangible assets, but on the anticipated prospects of the company. Sheikh Muhammad bin Ibrāhīm al-Sheikh emphasized:

"Buying shares is not primarily about current tangible assets but about ownership in the company's future success and profit potential. This clarifies why trading shares is permissible, and Allah knows best[536]*."*

In conclusion, **the assets of joint-stock companies belong to the shareholders themselves.** Accordingly, the shareholders are ultimately liable for the company's financial obligations and debts, rather than the company itself.

Topic 3: Company Debts Are Guaranteed

Among the issues related to companies is the question of whether shares sold on the market include a portion of the company's debt. Before addressing this, it is important to note that selling a common share is unanimously permitted.

Ibn Taymiyyah said:
"It is permissible to sell a common share, as agreed upon by Muslims, based on the Sunnah[537]*."*

Ibn Qudamah said:
"It is permissible if a partner buys a share from his partner, for he is purchasing the property of another[538]*."*

Regarding debts, however, they cannot be sold; ownership of a share does not transfer personal liability for existing company debts, although the shareholder assumes the rights and obligations associated with the ownership of that share.

[536] Ahkam al-Taʿamul fi al-Aswaq al-Maliyyah al-Muʿasirah by Mubarak bin Sulaiman: Vol. 1, p. 199.
[537] Majmu Fatawa ibn Taymiyyah: vol. 29, p. 233.
[538] Mughni Ibn Qudamah: Vol. 7, p. 167.

An analogical example

If someone buys a commodity on credit and then resells it, the original buyer — not the second purchaser — remains the debtor. Likewise, when shares are sold, the buyer steps into the seller's ownership position, but the company's debt remains unchanged.

In general, the key point is that the company itself functions as the guarantor for its debts, regardless of changes in shareholders. For this reason, companies must carefully maintain reserves — funds set aside to ensure debt repayment. These reserves act as a form of *takaful*, protecting both shareholders and creditors.

Hadith instruction

The Prophet ﷺ instructed Muslims to set aside funds to repay debts: Abu Hurayrah narrated that the Prophet ﷺ said:

"If I had gold equal to the mountain of Uhud, I would not like it to remain with me for more than three days, except for something I set aside for a debt[539]*."*

He ﷺ also purchased food on credit and mortgaged his armor as collateral, demonstrating the duty to show intent and preparation for repayment[540].

Abu Hurayrah further narrated that the Prophet ﷺ said:
"Whoever takes people's wealth intending to repay it, Allah will repay it for him; and whoever takes it intending to waste it, Allah will destroy him[541]*."*

This highlights the need for sincere intent and practical measures to ensure repayment; when such measures are in place, the debt is "under Allah's guarantee," as the ḥadīth indicates.

In modern corporations, creditors generally seek recourse from the company's assets rather than from individual shareholders. This underscores the need for

[539] Sahih al-Bukhari: Hadith: 2389.
[540] See: Sahih Muslim: Hadith: 4116.
[541] Sahih al-Bukhari: Hadith: 2387.

the company to maintain adequate reserves to safeguard creditors' rights and preserve financial integrity.

The role of state oversight

To safeguard wealth (*hifz al-māl*), authorities must establish mechanisms to hold corporate management accountable[542]. Responsible governance prevents mismanagement, protects shareholders and depositors, and aligns with the objectives (*maqāṣid*) of Sharīʿa. Given that companies play a central role in economic development and hold moral and legal weight under Islamic law, their sound operation must be safeguarded.

[542] See: Dawr al-Siyasah al-Maliyah fi Tahqiq al-Tanmiyah by Dr. Sayid Adiah: p. 400.

Section Two:
Sharing in Profits and Output

In Islam, trade is a noble and permissible activity grounded in the exchange of lawful and beneficial goods (*ṭayyibāt*). Profit, therefore, must arise from legitimate contracts and honest dealings — not from fraud, deception, or unjust gain.

Allah Almighty says:

- *"He makes lawful for them the good things and prohibits for them the bad things"* (Aʿrāf: 157).
- *"O you who have believed, do not consume one another's wealth unjustly, but only [in lawful] business by mutual consent"* (Nisāʾ: 29).

A central issue in profit distribution is whether it is permissible to **combine wages or salary with a percentage of the profit.** A worker's status may take several forms — *Muḍārib* (investment manager), *Ajeer* (hired employee), partner, or non-partner — and each requires a separate juristic ruling. This section addresses these categories with illustrative examples.

Topic 1: Opinions on Workers' Income

A worker may be compensated in several primary ways — for example:

1. A fixed wage (*Ijāra*)
2. A percentage of output, or
3. A percentage of profit (*Muḍāraba*).

A question arises as to whether these methods can be combined into a single contract.

Sheikh Ahmed Sharif al-Naʿsān stated:
"According to the majority of jurists, it is not permissible for a person to work as both a partner and an employee. If this is unavoidable, he has two options: first, to increase his profit percentage over his share in the company, which is

unanimously permitted. Second, to make the lease contract independent of the partnership contract, which is also permissible. While some contemporary jurists allow combining the roles directly, following the majority view is more prudent where an alternative exists[543]*."*

This indicates that most jurists prohibit a person from serving simultaneously as both a partner and an employee, although some contemporary scholars permit it.

Ibn al-Mundhir reports:
"All the scholars we know unanimously agreed that Qirad (Muḍāraba) is invalid if one of the partners, or both of them, stipulates a specific sum of dirhams for himself[544]*."*

This raises an important question: Does this consensus hold in all cases, or are there circumstances in which it may not be applicable?

AAOIFI Sharīʿa Standards clarify:
"It is permissible to assign one of the partners specific tasks under a separate contract, such that he can be dismissed without amending or terminating the company (Sharika) contract. In such a case, the appointed partner may earn a specific remuneration[545]*."*

Dr. Abdullah bin Ibrahim further explains:
"If one of the partners is the manager of the company and receives a fixed salary, combining the roles of worker and partner, this is permissible according to Sharīʿa[546]*."*

We will examine this issue with detailed examples — showing **when combining salary and profit share is permissible and when it is not.** Incentives or performance bonuses to a Muḍārib or worker are not addressed here, since they fall outside the core *Muḍāraba* or *Ijāra* contracts.

[543] Fatawa Sheikh Ahmed Sharif al-Naʿsān: Fatwa No. 4105.
[544] Mughni Ibn Qudamah: Vol. 7, p. 146.
[545] AAOIFI Sharīʿa Standards: No 12 (Al-Sharikah)
[546] Fatawa al-Islam al-Yawm (Dr. Abdullah bin Ibrahim Al-Nasser): No. 145181

Topic 2: The Worker as Partner or Non-Partner

Companies (Sharika) play a central role in economic development by creating jobs and producing goods and services, thereby benefiting both partners and employees. Jurists discuss several forms of partnership — ʿInān, Wujooh, Abdān, and Muḍāraba — each with its own governing rules. Ibn Qudāmah stated:

"The scholars have unanimously agreed on the permissibility of Sharika in general[547]*."*

To ensure lawful earnings and prevent unjust forms of wealth consumption, company profits must be distributed fairly. This topic examines the circumstances under which an employee may — or may not — receive a share of the profits in addition to his salary or wages.

Subtopic 1: The Non-Partner Worker

If a merchant hires a worker on a fixed salary (*Ijāra*), the worker is entitled to the agreed amount regardless of whether the business is profitable.

Example:

- Capital: 100,000 dirhams
- Profit after expenses: 50,000 dirhams

Under *Ijāra*, the merchant keeps the full profit (50,000), while the worker only receives his salary.

If the arrangement is *Muḍāraba* — profit split equally — then both merchant and worker receive 25,000 dirhams.

The Bottom Line:

- A non-partner worker may be compensated either:
    - by salary (*Ijāra*), or
    - by profit share (*Muḍāraba*).

[547] Mughni Ibn Qudamah: Vol. 7, p. 109.

- However, both forms may not be combined in a single contract.

Dr. Khaled Abdel-Aleem Metwally explains:
"If the agreement is that you work for the company and receive both a fixed salary and a percentage of profits, this is impermissible. In Muḍāraba, you take a profit share, not a salary; in Ijāra, you take a salary, not a profit share[548]*."*

AAOIFI Sharīʿa Standards adds:
"In principle, it is not permissible to earn a share of profit in addition to a fee in a Muḍāraba contract[549]*."*

Therefore, **non-partner workers cannot combine wages and profit share.** The consensus reported by Ibn al-Mundhir applies here: Muḍāraba is invalid if any partner or worker fixes a specific sum for himself in addition to his profit share[550].

Subtopic 2: The Partner Worker

A "worker as partner" scenario arises when an individual performs labor or management duties **while also sharing in profits** as either:

- **Hired-Partner** (employee plus capital investor), or
- **Muḍārib-Partner** (managing partner in Muḍāraba who also invests capital).

A) Hired-Partner

If two partners each invest 50,000 dirhams in a business, profits are divided equally (25,000 each). A partner who is also an employee may receive a salary in addition to his share of profit.

Dr. Abdullah bin Ibrahim states:

[548] Fatawa al-Mu'amalat al-Maliyah: Fatwa No. 6153.
[549] AAOIFI Sharīʿa Standards: No. 13 (Muḍāraba).
[550] Mughni Ibn Qudamah: Vol. 7, p. 146.

"If one of the partners manages the company and is paid a fixed salary, this is permissible according to Sharīʿa[551]*."*

B) Muḍārib-Partner

If a working partner (Muḍārib) invests capital of 50,000 dirhams while the other partner invests an equal amount, profits are split according to agreement. Suppose the total profit is 50,000:

- Each partner receives 25,000 as profit on capital.
- The working partner also receives 12,500 as Muḍārib profit.
- **Total for working partner: 37,500 dirhams.**

Juristic basis:

- *Durar al-Hukkām*: If a Muḍārib mixes his own funds with Muḍāraba funds, he takes profit on his own capital **plus** a Muḍārib's share on the other's capital[552].
- *AAOIFI Sharīʿa Standards*: A Muḍārib who also invests becomes both a partner (profit on his capital) and a Muḍārib (profit on labor)[553].

C) Muḍārib-Hired-Partner

This describes a situation where a single person combines three capacities — Muḍārib, hired worker, and capital partner — in the same arrangement.

- Such an arrangement is impermissible because:
- The roles of Muḍārib and Ajīr (hired worker) cannot be combined.

Topic 3: Musāqāt, Muzāraʿa, and Muḍāraba

The classification of contracts is significant because it provides a framework for determining the precise rulings of a transaction; indeed, the juristic axiom applies here: "judging something is contingent upon understanding it." Thus,

[551] Fatawa al-Islam al-Yawm (Dr. Abdullah bin Ibrahim Al-Nasser): No. 145181
[552] Durar al-Hukkam fi Sharh Majallat al-Ahkam: Article: 1417.
[553] AAOIFI Sharīʿa Standards: No. 13 (Muḍāraba)

to ensure fairness in the allocation of profits or outcomes, jurists debate whether these contracts fall under Mushāraka (partnership) or Ijāra (hiring).
Before addressing this issue, it is useful to recall an earlier point: the contract between a worker and the Rabb al-Māl (capital owner) may take one of two forms:

- **Ijāra** – where the worker receives a fixed wage or salary; or
- **Mushāraka** – such as *Muḍāraba*, where the worker receives a percentage of profit.

Nevertheless, classical jurists differed on whether Muḍāraba, Musāqāt, and Muzāraʿa should be treated as forms of Ijāra or as types of partnership. For instance, Ibn Juzayy classifies these contracts under the category of unknown Ijāra, whereas Ibn Taymiyyah holds that they are forms of Mushāraka.

Ibn Juzayy stated regarding *Musāqāt*:
"Musāqāt is permissible, but it is an exception to two invalid contracts: unknown Ijāra and the sale of something not yet created[554]." Regarding *Muḍāraba (Qirāḍ),* he said:
"Qirāḍ is permissible, but it is an exception to uncertainty (gharar) and unknown Ijāra[555]."

In contrast, **Ibn Taymiyyah** explained:
"Muḍāraba is a form of Sharikat al-ʿAqd (contractual partnership) according to the consensus (*ijmāʿ*) of scholars. The same applies to Musāqāt and Muzāraʿa, even though some jurists classify them as forms of Ijāra and argue that they contravene *qiyās* (analogical reasoning). However, the correct view is that these contracts are distinct forms under the broader category of Mushāraka and are supported by analogy to other lawful partnerships[556]."

From these statements, it is clear that:

[554] Al-Qawanin Al-Fiqhiyah by Ibn Juzayy (Maliki): p. 433. He added: "Abu Hanifa prohibited musaqat entirely, while others allowed it."
[555] Al-Qawanin Al-Fiqhiyah by Ibn Juzayy: p. 437.
[556] Majmu' Fatawa Ibn Taymiyyah: Vol. 30, pp. 74-75.

1. Jurists disagreed on whether to classify these contracts as Ijāra or Mushāraka.
2. They also debated whether these contracts conform to or depart from *qiyās*.

To clarify the matter, we will evaluate these contracts using the *Mīzān* (juristic scale), analyze the debt implications, and examine relevant Sharīʿa evidences.

1. Muḍāraba, Musāqāt, and Muzāraʿa on the Mīzān

Ijāra vs Mushāraka from a debt perspective

- **Ijāra (hiring):** When an employer hires a worker, the worker becomes entitled to a fixed wage upon completion of the work (or at agreed intervals). If the employer fails to pay, a debt is established. The Prophet ﷺ said: "Give the worker his wage before his sweat dries[557]."
- **Mushāraka (partnership):** In partnership contracts, the parties share profit or output, but no debt obligation is created.

Key question: Does Muḍāraba create a debt owed to the *Muḍārib* by the *Rabb al-Māl* after the work is completed, as in Ijāra?
Answer: No. In Muḍāraba, the working partner only receives a share of the profit. If no profit is realized, he receives nothing — there is neither a guaranteed wage nor any debt owed by the capital provider.

The Bottom Line: Muḍāraba, Musāqāt, and Muzāraʿa fall under partnership (Mushāraka), not hiring (Ijāra), because compensation is based on shared outcomes rather than guaranteed payment.

2. Sharīʿa Evidences Distinguishing Ijāra and Partnership

A) Working for a known and guaranteed wage (Ijāra)

Ḥanzala ibn Qays reported:

[557] Sahih Sunan ibn Majah: Grade: Sahih (Albani), Vol. 2, p. 287.

"I asked Rāfiʿ ibn Khadīj about renting land for gold and silver. He said: 'There is nothing wrong with it. In the time of the Messenger of Allah (peace be upon him), people used to rent land for what grew on the banks of streams or where springs emerged — some areas might yield produce and others none at all. They had no other form of rental except this, and for that reason, it was forbidden. But if the payment is something known and guaranteed (dirhams or dinars), there is no harm in it[558].'"

Thus, hiring someone for a **fixed, guaranteed wage** is permissible under Ijāra, and the wage must be paid promptly — "before his sweat dries[559]." However, if the compensation is **uncertain or unguaranteed**, such as crops from a specific patch of land, the Ijāra is invalid.

B) Working for a share of output (Mushāraka)

Ibn 'Umar reported:
"The Messenger of Allah ﷺ made an agreement with the people of Khaybar to cultivate the land in return for half of the produce[560]."

This proves the permissibility of giving a **percentage of yield** as compensation — e.g., 50/50 share — which forms the basis of Musāqāt, Muzāraʿa, and Muḍāraba. These contracts are **profit/output-sharing partnerships**, not Ijāra.

Al-Khattābī: *"The basis of Muḍāraba in the Sunnah is Muzāraʿa and Musāqāt[561]."*

Al-Rāfiʿī: *"They supported the validity of Qirād (Muḍāraba) by the consensus of the Companions and by analogy with Musāqāt[562]."*

Ibn Qudāmah in al-Mughnī: *"Musāqāt is like Muḍāraba[563]."*

---

[558] Sahih Muslim: Hadith: 3952.
[559] Sahih Sunan ibn Majah: Grade: Sahih (Albani), Vol. 2, p. 287.
[560] Sahih Muslim: Hadith: 3962.
[561] Ma'alim al-Sunan (Sharh Sunan Abi Dawud) by Al-Khattabi: Vol. 2, p. 81.
[562] Al-Muharrar by Al-Rafi'i: p. 222.

Key Principles Summarized

Permissible transactions:

1. Hiring for a **fixed, guaranteed wage** (Ijāra, e.g., 1,000 dirhams).
2. Agreements for a **known share of output** (Muzāraʿa or Musāqāt) — a form of partnership based on fair risk-sharing.

Impermissible transactions:

- Compensation in **specific, uncertain produce or assets** (e.g., a patch of land or specific crop), which is neither valid Ijāra nor Mushāraka due to *gharar* (uncertainty).
- **Legal implication:** Using Ijāra terminology for Musāqāt or Muzāraʿa contracts renders them invalid, because the wage is undefined. Al-Fiqh al-Manhajī affirms: "If the two parties use the term 'hiring (ijāra)' in a musāqāt contract, it is not a musāqāt contract due to the use of ijāra terminology; nor is it an ijāra contract, because the amount is undefined[564]."

Common Features of Ijāra and Mushāraka

Despite differences, both involve:

- **Work performed by one party** – either an employee (Ijāra) or a working partner (Muḍāraba).
- **Agency (Wakālah):** In Ijāra, the employee serves as an agent of the employer; similarly, in Muḍāraba, the Muḍārib serves as an agent of the investor.

After clarifying the classification of Ijāra and Mushāraka, we now turn to other transactions that fall under this framework and operate according to these principles.

[563] Mughni Ibn Qudamah: Vol. 8, p. 16.
[564] Al-Fiqh Al-Manhaji (Shafi'i): Vol. 7, p. 27.

Practical Models

Mushāraka (partnership) can take a variety of forms beyond the well-known contracts such as Musāqāt, Muzāraʿa, and Muḍāraba. The following examples demonstrate how jurists have applied Mushāraka principles in practical contexts, along with their reasoning.

(a) The Case of the Miller's Qafiz

Scholars differed over this transaction[565]. If a person gives wheat to a miller on the condition that the miller keeps **a qafiz** (a fixed measure) of flour as payment, the contract is invalid because:

- **It is not a partnership:** the worker does not own a proportional share of the outcome (e.g., half or a third).
- **It is not a valid Ijāra (hiring):** the qafiz is uncertain and not guaranteed, creating gharar (risk).

However, the contract becomes valid in either of two ways:

- If the worker's compensation is a *proportional share* of the flour (e.g., a quarter or half), the arrangement becomes a form of Mushāraka.
- If the worker is *guaranteed* the qafiz regardless of yield, it becomes valid under Ijāra, even if taken from the flour itself.

(b) Skinning a Sheep in Exchange for Its Hide

Like the previous case, hiring someone to skin a sheep in return for its hide is invalid because:

- **It is not a partnership:** the worker owns no share of the sheep.
- **It is not a valid Ijāra:** the hide is uncertain — it may be intact, damaged, or unusable.

Leading scholars confirmed this:

[565] Al-Muʿamalat al-Maliyah Asalah wa Muʿasarah by Al-Dubyan: Vol. 9, p. 215.

Ibn Qudāmah: *"If someone hires another to skin an animal in exchange for its hide, it is not permissible, because he does not know whether the skin will come out intact or not*[566]*."*

Al-Nawawī (Rawdat al-Ṭālibīn): *"It is not permissible to hire a skinner to skin a sheep for its hide*[567]*."*

Al-Shirbīnī: *"It is not valid to hire a skinner to skin a sheep or a miller to grind wheat, in exchange for the hide or some of the flour*[568]*."*

If the worker instead receives a proportional share of the sheep itself, the arrangement becomes a valid Mushāraka, as both parties now share ownership and risk.

(c) Giving a Net to a Fisherman

If a person provides a net to a fisherman — or a car or animal to a worker — on the condition that each receives half of the proceeds, this is a valid Mushāraka. Both parties contribute to the venture and share the profit and risk.

Ibn al-Qayyim stated:

"If he gives his net to a fisherman to catch fish with, and the fish are divided equally between them, then it is valid, according to the Qiyās of Ahmad's statement — as mentioned in al-Mughnī — and the fish are divided equally between them[569]*."*

(d) Assigning a Productive Asset to a Worker

If a person gives an animal, vehicle, or ship to a worker to earn income — on the condition that profits are shared equally — this is also a valid Mushāraka.

[566] Mughni Ibn Qudamah: Vol. 8, p. 15
[567] Rawdat al-Talibin by al-Nawawi: Vol. 4, p. 251.
[568] Mughni al-Muhtaj by Al-Shirbini: Vol. 2, p. 431.
[569] Ighatht al-Lahfan by Ibn al-Qayyim: p. 724.

Ibn Qudāmah: *"We permitted giving the animal to the one who works on it for half of the profit because it resembles Muḍāraba in investment, and Musāqāt is also similar to Muḍāraba*[570]*."*

Ibn al-Qayyim: *"Just as it is permissible to give a worker funds to trade with and share profits, or land to cultivate and share crops, or trees to tend and share fruits, likewise, it is permissible to give him an animal to work with and share the outcome. All of these are valid partnerships, supported by Sharīʿa texts, analogy, the consensus of the Companions, and public interest*[571]*."*

This demonstrates Mushāraka's flexibility wherever both parties contribute and share risk.

(e) Collecting a Debt for a Percentage

If a worker is assigned to collect a debt in exchange for a fixed percentage of what is recovered, this is a Mushāraka, not Ijāra. Both parties share in the proceeds and risk of non-collection.

Ibn al-Qayyim discussed:

"If someone says, 'Take possession of my debt that so-and-so owes me, and you will get one from every ten,' without specifying the amount of the debt, it is not permissible according to Ibn Wahb. But Ibn al-Qāsim and Asbagh permitted it. Those who prohibited this saw it as Ijāra with unknown compensation. The correct view is that it is a form of partnership — Ahmad explicitly stated that[572]*."*

(f) Renting Out Property on a Commission Basis

If an owner agrees that a worker will rent out his property for a percentage of the rental income, this is a valid Mushāraka. The owner provides the asset, the worker contributes their efforts, and both share in the proceeds.

If, however, the worker is paid a fixed wage regardless of results, the contract qualifies as Ijāra rather than partnership.

---

[570] Mughni Ibn Qudamah: Vol. 8, p. 16

[571] I'lam al-Muwaqqi'in - Ibn al-Qayyim: Vol. 5, p. 417.

[572] Ighatht al-Lahfan by Ibn al-Qayyim: p. 726.

Key Distinction: Ijāra vs Mushāraka

- **In Ijāra**, the worker receives a guaranteed payment, regardless of profit or loss.
- **In Mushāraka**, both parties share in the outcome, including profit and risk.

Topic 4: Generating a Lawful Profit

The primary objective of trade is to earn a profit. A merchant purchases goods and then sells them; if the selling price exceeds the purchase cost, the difference is considered profit. However, not every profit that arises from financial transactions is permissible — some are explicitly forbidden.

This topic revolves around the Prophet's saying: *"It is not permissible to sell what you do not have, nor to profit from what is not guaranteed*[573]*."*

This hadith establishes a foundational principle in Islamic finance, although scholars have differed in their interpretation of its meaning and application.

Opinions on the Hadith:

- **Meaning of the phrase "mā laysa ʿindak":** Some interpret it as "Do not sell what you do not have," while others explain it as "Do not sell what you do not possess."
- **Meaning of the phrase "mā lam yuḍman":** Some scholars state that it refers to an item that has not yet been taken into possession[574]. Others argue that it refers to property that is not owned. This divergence in interpretation led some jurists to say that Muḍāraba contradicts Qiyās (analogical reasoning), since the capital in a Muḍāraba is not guaranteed by the Muḍārib (worker), yet he is still

[573] Sahih Sunan Ibn Majah: Grade: Hasan Sahih, (Albani): Vol. 2, p. 220.
[574] See: Subul al-Salam by Al-San'ani: Vol. 3, p. 35.

entitled to a share of the profit, despite the profit being derived from funds that are not under his guarantee[575].

Keywords: Ownership vs Guarantee

Some jurists did not differentiate between *ownership (milk)* and *guarantee (ḍamān)*. Instead of saying, "Ownership of the sold item transfers from the seller to the buyer," they stated, "The guarantee of the sold item transfers from the seller to the buyer[576]." In their view, the transfer of guarantee effectively represented the transfer of ownership. However, this view is incorrect, as guarantee (ḍamān) and ownership (milk) are two distinct concepts, and one does not necessarily imply the other.

If the buyer takes possession of the item, he owns it — this is ownership, not a guarantee. If we ask him at this stage, "Are you the owner of the item?" his answer should be "yes." But if we ask, "Are you the guarantor of the item?" his answer should be "no," because if the item is destroyed while in his ownership, he bears no liability for it.

This clearly demonstrates that ownership and guarantee are separate concepts, and that what is actually transferred in a sale is ownership, not liability or guarantee.

Regarding the hadith, it comprises two distinct statements:

1. "It is not permissible to sell what you do not have."
2. "Nor to profit from what is not guaranteed."

The first part addresses the act of selling, while the second pertains to profit-making.

1. Selling What One Does Not Have or Is Unavailable

We must first understand the difference between the words "**have**" and "**possess**." In both Arabic and English, the word "have" conveys the idea of something being available, present, or accessible. For example, when someone enters a shop to buy shirts, they naturally ask, "Do you have shirts?" rather

[575] See: Fath al-Qadeer by Ibn Hummam: Vol. 6, p. 158.
[576] Bada'i' al-Sana'i' by Al-Kasani: Vol. 7, p. 237.

than "Do you possess shirts?" This reflects common usage and practical meaning, and emphasizes that what is not available or present cannot be claimed or sold.

In this hadith, the Prophet (peace be upon him) made it clear that it is not permissible for a person to sell what he does not have and is unavailable. Based on this, a seller — whether a Mudārib, a broker, or even the owner of the wealth — is not permitted to sell something that is not available, or out of stock.

This distinction between "have" and "possess" is reflected in the following Sharīʿa texts:

Allah the Almighty says: *"Say: Do you **have** any knowledge that you can produce for us?"* (Anʿam: 148)

This verse implies that one may not claim knowledge they do not have, just as one may not sell something they do not have or that is unavailable.

Similarly, when a man came to the Prophet (peace be upon him) wishing to marry a woman, the Prophet asked:

> "Do you **have** anything to give her as a dowry?" The man replied: "I only **have** my lower garment." The Prophet said: "If you give it to her, you will sit without a lower garment. So, look for something else[577]."

Here, the Hadith uses the word "have" (Do you have). This clearly illustrates that something unavailable is not the same as something available, even if one intends to acquire it later.

Moreover, Hakim ibn Hizam reported:

> "I came to the Messenger of Allah (peace be upon him) and said, 'A man comes to me asking to **buy** something I do not **have**. I then go and buy it

[577] Sahih al-Bukhari: Hadith: 5135.

from the market and sell it to him.' The Prophet ﷺ said, 'Do not sell what you do not **have**[578].'"

Here, the Hadith uses the word "have" (Do not sell what you do not have). This hadith prohibits the sale of what is not currently available, even if the intention is to acquire it later.

2. Profit from an Unguaranteed Item

"Ribh mā lam yudman" — literally, "profit from that which is not guaranteed" — refers to earning profit from an unguaranteed item, such as undelivered goods or services.

In other words, the company owned the item and sold it, but did not fulfill the delivery obligation. Therefore, the principle of "Ribh mā lam yudman" applies in this case.

Related Sharīʿa Evidences

Regarding the meaning of "profit from something that is not guaranteed", if we examine the relevant Sharīʿa texts, we find that this principle refers to earning a profit from something — whether a commodity or a service — that has not yet been delivered, completed, or fulfilled. One of the key illustrative evidences is the statement of Allah the Almighty:

> *"And that man shall have nothing but what has been done (saʿā)."* (Najm: 39)

Linguistically, the verb *saʿā* is intransitive and differs from *saʿā ilayhi* ("strove for"), though some may conflate the two. Here (in the verse), *saʿā* denotes an effort that has been carried out and completed, not merely intended. Its meaning is therefore broader: it includes not only a person's own actions but also actions actualized on his behalf, such as supplication, waqf (endowment), or other benefits conveyed to him.

[578] Sahih Sunan Al-Tirmidhi: Grade: Sahih (Albani): Vol. 2, p. 17.

Al-Rāzī's Explanation

Al-Rāzī remarks that the phrase *"illā mā saʿā"* is expressed in the past tense, not the future, to stress that a person's reward is tied to an effort already done, achieved, and completed[579].

This principle is echoed in the saying of the Prophet ﷺ:
"The son of Adam says: 'My wealth, my wealth.' But O son of Adam! Do you truly own any wealth except what you ate and consumed, what you wore and wore out, or what you gave in charity and thus carried forward?[580]."

This ḥadīth demonstrates that a person's real ownership is only in what has been used, expended, or executed, not in what remains unutilized.

Based on the meaning of *saʿā* ("what has been done") and the relevant ḥadīth, the seller must deliver the goods and the lessor must provide the service; only then are they entitled to profit, which is earned through performance or delivery.

For Deeper Understanding: Types of Guarantee

The guarantee (ḍamān) may be unilateral or bilateral, but in either case, the right to profit or reward arises only after performance.

1. Guarantee from One Party:

An example is the hadith of the Prophet (peace be upon him): *"The leader (Imām) is a guarantor. If he does well, it is for him and them. If he does wrong, it is against him and not against them[581]."*

This means that the guarantee lies with the Imām, and his reward or burden depends on what he actually performs or implements.

2. Guarantee from Two Parties:

An example is the hadith: "Whoever guarantees for me what is between his jaws and what is between his legs, I will guarantee him Paradise[582]."

[579] Tafsir Al-Razi: Surah al-Najm: 39.
[580] Sahih Muslim: Hadith: 7420.
[581] Sahih Sunan ibn Majah: Grade: Sahih (Albani), Vol. 1, p. 292.

This is a two-sided guarantee: the person must fulfill the condition (guarding his tongue and private parts), and the reward (entry to Paradise) is contingent on that fulfillment, by Allah's grace. The implication is that the person performs a service (self-discipline) for a promised reward (Paradise), just as a guard offers a service in exchange for a wage.

Similarly, we might say: "Whoever guarantees me the guarding service will be entitled to such-and-such a wage."
But this wage is only due after the service is carried out, just as in the verse from Sūrat Yūsuf:

> *"And whoever brings it shall have a camel-load [of reward]."* (Yūsuf: 72)
> — Meaning: the reward is given after completing the task, not before.

Examples from Hadith

Many hadiths reflect this same principle:
The Prophet (peace be upon him) said, *"Whoever prays the two cool prayers will enter Paradise*[583]*."* → The promise is after performance.

The Prophet (peace be upon him) said, *"Whoever guides someone to do good will have a reward like the one who does it*[584]*."* → The reward comes after actually guiding, not merely intending.

The Role of Completion in Profit and Reward
Results matter. In Sharīʿa, profit is tied to performance, completion, and actual delivery, not to mere promises, ownership, or risk-bearing in isolation. This principle is even reflected in the standard practices of financial institutions, which base their work on final accounts — that is, on what has been done, completed, and realized.

[582] Sahih Al-Bukhari: Hadith: 6474.
[583] Sahih Muslim: Hadith: 1438.
[584] Sahih Muslim: Hadith: 4899.

This concept is perfectly summarized in the well-known hadith (Sahih al-Bukhari): "Actions are judged by their endings[585]."

Profit Must Be Linked to Performance (Guarantee)

According to Islamic principles, an institution is not entitled to profit or wages until it has delivered a guaranteed item or service. Profit can only be realized after performance and fulfillment of the contractual obligation.

Dr. Rafiq Younis Al-Masry explains:
"When there is a profit, it implicitly means that the seller has delivered the sold item, provided a real service, and performed a legitimate act from an Islamic perspective[586]."

Similarly, Dr. Sami Hamoud states:
"The concept of profit among jurists, in general, does not differ from its linguistic meaning or usage in the Holy Qur'an, as they use the term to refer to the gain resulting from trade[587]."

Examples of Profit from Guaranteed vs Non-Guaranteed Items

If a person sells a commodity, delivers it, and earns a profit, this profit is legitimate and may be recorded in his accounts. However, he is not permitted to record a profit before delivery, as this constitutes a profit from an unguaranteed item. Moreover, if the seller makes a profit by selling goods he purchased but has not yet taken possession of, this too falls under the same prohibition.

Al-Khattābi said:
"As for the profit from what is not guaranteed, it relates to a case where one sells a commodity he purchased but has not yet taken possession of. The commodity remains under the guarantee of the original seller, not his own.

[585] Sahih al-Bukhari: Hadith: 6607.
[586] Dawabit al-Tijarah fi al-Iqtisad al-Islami by Muhammad Najib Hammadi Al-Ju'ani: p. 229.
[587] Tatwir al-'Amal al-Masrifiyah by Dr. Sami Hamoud, p. 249.

Therefore, it is not permissible to sell it until he takes possession of it and guarantees it (for the new buyer)[588]."

Al-Khattābi's phrase **"it remains under the guarantee of the original seller"** means that the contractual obligation of delivery has not yet been fulfilled. Thus, the buyer — if he seeks to resell — has no right to do so or to profit until he takes possession, at which point he assumes the guarantee (ḍamān) toward any subsequent purchaser.

The Hadith of ʿUrwah al-Bāriqi

A practical illustration of this principle is found in the hadith of ʿUrwah al-Bāriqi. The Prophet (peace be upon him) gave ʿUrwah a dinar to buy a sheep. ʿUrwah purchased two sheep with that dinar, then sold one for a dinar and returned to the Prophet (peace be upon him) with a sheep and a dinar. The Prophet (peace be upon him) accepted it and prayed for blessings for ʿUrwah[589].

This hadith demonstrates that:

- ʿUrwah, acting as an agent (*wakīl*), was entrusted to procure a sheep.
- He delivered the required item (a sheep) as per the agreement with the buyer.
- The additional profit (one dinar) arose **after** fulfilling the obligation and guaranteeing delivery.

Thus, the profit was legitimate because it resulted from a **guaranteed and delivered asset**, not from speculation or an unfulfilled obligation.

Important Point

Financial institutions consider revaluation reserves as unrealized gains that arise when an asset's market value exceeds its book value. Since these gains do not result from a completed, risk-bearing transaction, they must not be treated as actual profit; otherwise, they fall under the prohibition of *ribh mā lam yudman*. Profit must arise from real economic activity, not from

[588] Ma'alim al-Sunan (Sharh Sunan Abi Dawud) by Al-Khattabi: Vol. 2, p. 121.
[589] Sahih Sunan Ibn Majah: Vol. 2, p. 275.

speculative or accounting-based adjustments. Recognizing revaluation reserves as distributable profit undermines financial integrity, misleads investors, and endangers market stability.

Advance Payments Are Not Recognized as Profits Until Fulfillment:

In Islamic financial ethics or management, profits and wages are not recognized until the associated goods or services have been delivered and the contractual guarantee has been fulfilled. Therefore, any amounts received in advance are not considered profits until the associated obligation has been fulfilled. This principle is rooted in the prohibition of profiting from what has not been delivered or guaranteed.

If the buyer pays in advance before receiving the goods, the seller may utilize the funds. However, this amount must be treated as a debt (liability) owed by the seller, not as profit, since the guarantee of delivering the goods has not yet been fulfilled. Once the goods (or services) are delivered, the seller's obligation is fulfilled, and any profit made becomes legitimate, as it now results from a completed, guaranteed transaction. Below, more illustrative examples are provided.

Example 1: Prepaid Recharge Cards

Consider the case of a customer purchasing a prepaid recharge card from a telecom company. The company receives the payment and, in return, guarantees to provide communication services. Until the services are provided, these amounts remain a liability (debt) on the company. Recording profit before fulfilling this obligation would constitute unearned profit or, more precisely, *ribḥ mā lam yuḍman*[590] — which is impermissible in Sharīʿa.

If the telecom company were sold while there were unused customer balances, the new company must receive and honor those balances. This is because the amounts received in advance represent unfulfilled obligations (not profits) until services are rendered.

[590] Sahih Sunan Ibn Majah: Grade: Hasan Sahih, (Albani): Vol. 2, p. 220.

Example 2: Property Rental

If a company rents out properties and collects rent in advance, it cannot consider that rent as profit until it provides the rental service. The tenant guarantees payment, while the company guarantees availability and use of the leased property.

If the rental benefits are interrupted during the lease term, the lessor must return the portion of the rent that corresponds to the undelivered period.

Imām Al-Ṭaḥāwi said:

"If the lease is concluded for immediate, deferred, or unspecified payment, and the lessor receives the rent, he owns it. However, if the lease ends before the agreed term, the lessor is entitled only to the portion that matches the period used, and the rest must be returned[591]."

This again affirms that rent is profit from a guaranteed service, and may only be recognized after the service is performed.

Example 3: Educational Institutions

Educational institutions may receive tuition fees in advance, but they may not recognize them as profit until the service — i.e., the delivery of education — is rendered. This aligns with the Sharīʿa principle that profit follows guaranteed and fulfilled services.

Example 4: Wages for Work

Just like profit, wages are due only after the work is performed. A teacher, for instance, becomes entitled to his salary after completing the teaching, as it is the fulfillment of a service he guaranteed.

Ibn al-Sa'idi al-Maliki reported:

"Umar ibn al-Khaṭṭāb appointed me to collect charity. After completing the task and delivering it, he ordered that I be paid a wage. I replied, 'I only worked for the sake of Allah, and my reward is from Him.' Umar said, 'Take what you have been given. I worked for the Messenger of Allah, peace be

[591] Mukhtasar by Al-Tahawi: p. 128.

upon him, and said the same, but he told me: 'If you are given something without asking, then take it and use it or give it in charity[592].'"

From this hadith, it is clear that the wages have been issued upon fulfillment of the task.

In Summary — Sharīʿa Basis for the Profit Principle
All these cases affirm a foundational Islamic rule: the prohibition of *ribḥ mā lam yuḍman* (profit from what is not guaranteed). This principle reflects the meaning conveyed in the Qur'anic verse: *"And that man shall have nothing but what has been done (saʿā)"* (Najm 39). Thus, entitlement to profit or wages arises only after real effort and delivery, not from mere contractual stipulation or prepayment.

3. If an Old Defect Is Discovered in the Sold Item

A person may purchase an item, use it, and then discover a pre-existing (old) defect. In this case, the buyer has the right to return the item, but is not obligated to return the benefit he obtained during the time it was in his possession.

Example:
A man purchases a car through Murābaḥa, takes possession of it, and subsequently rents it out. Two days later, he discovers an old defect in the car and decides to return it to the seller (e.g., the bank). In this case, he is not required to return the rental income earned, as he had the right to use the car.

Since ownership had been transferred to the buyer, the seller has no right to demand compensation for the benefit the buyer gained during the period of ownership.

[592] Sahih Muslim: Hadith: 2408.

Hadith Evidence:
The Prophet (peace be upon him) said:
"Do not tie up the udders of camels and sheep (so they appear to have more milk). Whoever buys them has two options after milking them: if he is satisfied, he keeps them, and if dissatisfied, he returns them and gives a sāʿ of dates[593]."

This ḥadīth indicates that the buyer:

- Has the right to benefit from what he bought.
- May return the item if a defect is discovered.
- Is not required to return what he benefited from (e.g., milk or use), except for what was present at the time of purchase (i.e., the milk tied up in the udder).

Illustrative Analogy:
This is similar to a person who purchases a car with a full fuel tank and then discovers a defect. If he chooses to return the vehicle, he cannot be asked to justify why he used it during that period. However, just as the milk present at the time of purchase must be compensated with a sāʿ of dates, the buyer might be expected to refill the fuel tank if returning the car — that is, to return what was part of the original purchase, not what occurred during his ownership.

Imām Al-Shāfiʿi's View:
Imām al-Shāfi'i said: "If the buyer of the she-camel (muṣarrāt) accepts it despite the defect of tasriyya (withholding milk), he may keep it. But if a different defect appears afterward and he returns it, he must only give a sā' of dates for the initial milk, not for any milk produced after purchase, since that occurred under his ownership, just as al-kharāj is for the one who owns it[594]."

4. The Principle of Al-Kharāj bi al-Ḍamān

The hadith "Al-Kharaaj bi al-Ḍamān", often translated as "Benefit is linked to guarantee," has been the subject of scholarly debate. While some scholars, such as Imam al-Bukhārī and others, have classified the hadith as weak

[593] Sahih Muslim: Hadith: 3815.
[594] Al-Umm of Imam al Shafi'i: Vol. 10, p. 275.

(ḍaʿīf)[595]. Other authorities have considered it authentic and accepted its legal implications within Islamic jurisprudence.

Despite the differing views on its authenticity, the hadith is frequently cited by jurists in cases such as when a buyer uses a purchased item and later discovers a pre-existing defect. In such scenarios, the buyer is permitted to return the item without being obligated to return the benefit he gained from it — such as rental income, usage, or yield — while it was in his possession.

However, the central issue is determining the correct interpretation of the term ḍamān (guarantee) within the hadith, so as to avoid rulings based on misconception.

Two primary interpretations have been offered:

- **First view:** Some jurists interpret the ḍamān in the hadith as the buyer's guarantee. They explain: "The buyer may use the item, for if it is destroyed while in his possession, he bears the ḍamān (guarantee)[596]."

This reading interprets the guarantee as being from the buyer's side, implying that the benefit (kharāj) is justified because the buyer assumes risk after delivery.

- **Second view** (preferred): The more accurate interpretation, as discussed under the principle of "profit from undelivered and unguaranteed item", is that the benefit (kharāj) follows the guarantee (ḍamān) fulfilled by the seller; therefore, the buyer has the right to use and benefit from the item.

In this understanding, the guarantee refers to the seller's responsibility to deliver the item in a sound condition; once that obligation is fulfilled and ownership is transferred, the buyer may rightfully use and benefit from it.

[595] See: Subul al-Salam by Al-San'ani: Vol. 3, p. 61.
[596] See: Al-Nihaya fi Gharib al-Hadith by Ibn Atheer: Bab "Kharaja".

The following discussion will clarify why the second interpretation is more consistent with the contractual structure of sales in Islamic law.

Clarifying the Meaning of the Hadith:

In a contractual relationship, ḍamān (guarantee) refers to the obligation of one party to compensate for the loss or defect of the subject matter. Crucially, this obligation must be directed toward another party; the buyer does not 'guarantee' an item to himself. Therefore, within the context of a sale, the guarantee logically applies to the seller's obligation toward the buyer.

Until delivery, the item remains under the seller's guarantee: if the item is lost or damaged before the buyer takes possession, the seller is liable. Once the item is delivered, the seller's guarantee is fulfilled, and the buyer assumes ownership. Thus, the buyer's right to use the item is not because he now "guarantees" it, but because the seller has already guaranteed it to him, and fulfilled that obligation by valid delivery.

Accordingly, if someone were to ask why the buyer is using the item, the buyer's appropriate response would be: "Because it was guaranteed to me through a valid contract of sale, and that guarantee has been fulfilled." It is important to note that while a legitimate buyer may rightly say this, a usurper (ghāṣib) cannot, as the item was never guaranteed to him through a lawful transaction.

Therefore, the hadith "**Al-Kharāj bi al-Ḍamān**" should be understood to mean:

"The benefit (kharāj) is linked to the guarantee (ḍamān) provided by the seller; once the guarantee is fulfilled through valid delivery, the buyer is entitled to the benefit."

This interpretation aligns with the structure of Islamic contractual theory, where ownership and entitlement to benefit are the results of valid transfer and fulfilled obligations.

Conclusion:

The ḥadīth affirms that the benefit (kharāj) arises from the seller's guarantee (ḍamān); accordingly, the buyer is entitled to use and benefit from the item, as the right to benefit follows from the guarantee fulfilled by the seller.

Section Three:
Contemporary Applications of Sukūk

Sukūk are not a modern innovation; rather, their origins trace back to the early period of Islamic history[597]. Nevertheless, their contemporary proliferation is unprecedented, coinciding with the global expansion of financial instruments such as stocks and bonds. Modern jurists have permitted the issuance of various types of Sukūk, notably **Sukūk al-Ijāra**.

Sukūk al-Ijāra vs Bonds

Sukūk al-Ijāra differ fundamentally from conventional interest-bearing bonds. Bonds constitute debt obligations on the part of the issuing company or entity, characterized by a fixed, predetermined interest rate and a specified maturity. In contrast, Sukūk must be underpinned by tangible assets that generate actual returns, such as through leasing or other Sharīʿa-compliant modes of financing.

Sukūk al-Ijāra vs other types of Sukūk

Sukūk al-Ijāra are distinguished from other types of Sukūk because their underlying assets and their usufructs can be used as separate entities. Ownership of the physical asset resides with one party, who has the authority to sell or lease it, while the right to benefit from the asset may be transferred to another party — the lessee — through a lease contract.

This division gives rise to two distinct Sukūk structures based on leased assets: (1) Sukūk issued by the **asset owner**, and (2) Sukūk issued by the **lessee**. The **International Islamic Fiqh Academy** has affirmed the permissibility of both models[598], though without extensive elaboration. Accordingly, further clarification is warranted, particularly regarding their practical application. The following discussion is therefore divided into two sections:

- Sukūk Based on Leased Property (ʿAyn)
- Sukūk Based on Usufruct (Manfaʿah) of Leased Property

[597] See: Muwatta - Malik: Vol. 4, p. 927.
[598] International Islamic Fiqh Academy: 2004, Resolution: 137.

Topic 1: Sukūk Based on Leased Property

When a company acquires a property, it possesses the legal right to either sell or lease it. This dual entitlement permits the company to either transfer ownership through sale or retain ownership while generating income through leasing.

Once the property is leased to a lessee, however, the owner (now acting as lessor) is no longer permitted to rent it to another party during the lease period. The exclusive right to benefit from the asset during that term belongs to the lessee.

Illustrative Example:

A person buys a hotel for 50 million dirhams and then leases it for a term of 10 years, generating a total rental income of 150 million dirhams (i.e., 15 million dirhams per year). The owner then requires liquidity and decides to issue Sukūk to sell a proportional share of the leased property. This arrangement constitutes the issuance of **Sukūk based on leased assets**.

The objective of this Sukūk issuance is to sell undivided ownership shares in the leased property, thereby raising capital from investors. Upon subscription, the property becomes jointly owned by the Sukūk holders, who, as co-lessors, are entitled to receive the rental income paid by the lessee.

Accordingly, these Sukūk represent fractional ownership in tangible, income-generating assets. The legal relationship between the Sukūk holders and the originator is thus one of **co-ownership**, not of debt. Returns distributed to the Sukūk holders stem directly from the revenues generated by the leased asset.

If the lessee pays 150 million dirhams over the lease term (15 million dirhams annually), these payments represent both the project's cost and the profit due to the sukuk holders.

Jurisprudential Question:

If the property owner leases the hotel for ten years at a total of 150 million dirhams and subsequently sells a share of the leased property, is such a transaction permissible? In other words, may the owner dispose of the leased property — whether through sale, gift, or other means — without violating the lessee's right to benefit from the asset?

Answer:

Yes, it is permissible for the owner to dispose of the leased property in such a manner, as supported by the Prophetic precedent. The Prophet (peace be upon him) purchased a camel that was under a loan or lease arrangement and subsequently gifted it to the individual who had beneficial use of it.

In *Ṣaḥīḥ al-Bukhārī*, it is reported that Ibn ʿUmar was utilizing a camel — under a loan or lease arrangement — owned by his father, ʿUmar. The Prophet (peace be upon him) then purchased the camel from ʿUmar while it remained in Ibn ʿUmar's possession. After the purchase, the Prophet said to him: **"It is yours, O ʿAbdullāh ibn ʿUmar. Do with it as you wish[599]."**

This hadith demonstrates that once ownership of the asset is transferred through a valid sale contract, the new owner assumes full legal title — even if the asset remains in the possession of a third party (such as a lessee or borrower). The possessor becomes a trustee (amīn) on behalf of the new owner.

Therefore, the sale or gift of a leased property is permissible, provided that the rights of the lessee remain intact. The lease agreement continues to be binding, and the lessee retains the exclusive right to benefit from the property until the end of the lease term[600]. The new owner is not entitled to repossess the asset from the lessee prematurely, nor may they infringe upon the usufruct established by the existing lease contract.

[599] Sahih al-Bukhari: Hadith No: 2115.
[600] See Al-Fiqh Al-Manhaji (Shafi'i): Vol. 6, p. 156.

Topic 2: Sukūk of Usufruct of Leased Property

As previously established, once the owner of a property, such as a hotel, leases it to a lessee, the right of usufruct becomes exclusively vested in the lessee. This legal arrangement gives the lessee the authority to sublease the property to third parties, thereby enabling him to generate profit from the rental income.

Accordingly, the lessee (now acting as a sublessor) may issue **Sukūk al-Manfaʿah** (Usufruct Sukūk), wherein the sukūk holders are entitled to a proportional share of the rental proceeds received from subtenants. These usufruct sukūk holders collectively assume the status of a legal entity in relation to the property and are entitled to the income stream generated from its sublease.

The **International Islamic Fiqh Academy** has affirmed this arrangement in the following resolution:

"It is permissible to issue and trade Sukūk representing ownership of leased properties (ʿAyn Mu'ajjara). It is permissible for a leaseholder who has the right of subleasing to issue Sukūk al-Ijāra representing common shares in the usufructs that he owns by virtue of the lease, and to use such Sukūk for subleasing[601]."

This ruling affirms two important principles:

1. **The owner of the leased property may issue Sukūk based on the leased asset** (Sukūk ʿAyn Muʾajjara), representing undivided ownership shares in the leased property itself.
2. **A lessee who holds the right to sublease may issue Sukūk al-Ijāra** representing undivided shares in the usufruct of the leased asset.

From this, it becomes evident that the issuance of **usufruct Sukūk** assumes the existence of a **primary tenant** (the original lessee) and **secondary tenants** (sublessees). This leads to the following question:

[601] International Islamic Fiqh Academy: 2004, Resolution: 137.

Who Are the Usufruct Sukūk Holders?
Are the hotel guests — those residing in and paying for the rooms — the holders of the usufruct Sukūk?

Answer: No, the guests or residents in the hotel are **not** the Sukūk holders. They are the **end users** or **subtenants**, and they pay rent to their immediate lessor — the original lessee of the hotel. In contrast, holders of usufruct Sukūk collectively share ownership of the usufruct right and function as the original lessee (sublessor).

Clarification:
When the property owner leases the hotel to a lessee, that lessee may exercise the right to sublease individual rooms to guests. These guests become subtenants, while the lessee functions as the sublessor.

Suppose the hotel generates 20 million dirhams annually in rent revenue from the guests. The lessee pays 15 million dirhams of that amount to the original property owner (or to the holders of the leased-property Sukūk), and retains the remaining 5 million dirhams as profit.

Now, consider that the original lessee issues **usufruct Sukūk**, granting others ownership in the leasehold right. These sukūk holders collectively assume the role of lessee and sublessor. They form a legally recognized entity and are entitled to the rental revenue paid by the hotel guests.

If, for example, there are ten sukūk holders, and they receive 20 million dirhams annually in rental payments, they would collectively pay 15 million dirhams to the holders of the property-based Sukūk as rent and retain 5 million dirhams as their net income.

The Lessee's Right to Sell Usufruct Sukūk

The original lessee is permitted to sell **all or part** of the usufruct Sukūk:

- If **all** Sukūk are sold, the lessee exits the arrangement entirely and is no longer a co-owner of the leasehold rights.

- If **some** are sold, the lessee remains a co-owner of the usufruct and shares rental proceeds proportionally with other Sukūk holders.

In other words, the original lessee may establish a special-purpose entity — referred to as the **Usufruct Sukūk Entity** — to manage the leased property (such as a hotel). This entity **does not own the underlying asset**, but rather holds the **usufruct right** (i.e., the leasehold). If it issues Sukūk, purchasers of these Sukūk become **beneficial co-owners** of the leasehold right and are entitled to proportional shares of the income generated by subleasing.

If the entity requires financing, it may either:

- Secure a **Qarḍ Ḥasan** (interest-free loan), which must be repaid at face value without any increase, or
- Issue **Sukūk**, where investors become **partners**, not creditors.

Moreover, the existing owners of the entity may **sell the entity** to new owners. In such a case, the entity continues its leasehold operations uninterrupted. The new owners assume the position of the original tenant (lessee) from the perspective of the leased property's owner.

Sale vs Lease in Sharīʿa

A critical distinction must be made between **selling** the entity and **leasing** the hotel rooms:

- The **right of sale** includes the ability to transfer ownership of an existing entity — even if its properties (such as hotel rooms) are already leased.
- However, **leasing** cannot occur if the rooms are already leased to another party. In other words, leasing is constrained by existing tenancy rights, while sale is not.

Therefore, when the entity is sold, and new owners replace the previous ones, the leasehold rights and obligations transfer seamlessly to them. They assume the legal status of **original tenants**, while the hotel guests remain **subtenants**, continuing to pay rent regardless of changes in ownership.

Conclusion: Sukūk vs Bonds

This clarification highlights the fundamental distinction between Sukūk and conventional bonds: **Sukūk** represent **ownership in assets or usufructs**, and the returns they generate are tied to actual income streams and real economic activity. Consequently, **profits are not guaranteed at the outset**; they are contingent upon the performance of the underlying asset.

In contrast, **bonds** are **debt instruments** that grant their holders fixed interest payments, regardless of actual performance. For this reason, it is essential not to conflate **Sharīʿa-compliant Sukūk structures** with **interest-based financial instruments**, as their legal and ethical foundations are categorically different.

Chapter Seven:
Ribā (Usury)

- **Section One: Usury in Financial Transactions**

- **Section Two: ʿArāyā: Fresh for Dry Dates**

Section One:
Usury in Financial Transactions

Not all financial transactions are judged equally in Islamic law. Some, such as sales, are permitted, while others, such as *Ribā* (usury), are strictly prohibited. Allah the Exalted clearly states: *"Allah has permitted sale and forbidden Riba (usury)"* (Al-Baqarah: 275).

The prohibition of *Riba* is not exclusive to the Muslim community. It was likewise forbidden to previous nations, as indicated in the Qur'anic verse: *"And [for] their taking of usury while they had been forbidden from it..."* (An-Nisa' 4:161).

Al-Ālūsī, in his Tafsīr, comments:
"This verse indicates that usury was prohibited for them — just as it is for us — for otherwise Allah would not have threatened them with punishment for violating it[602]*."*

Riba is inherently unjust, as affirmed in the divine statement: *"But if you repent, you shall have your capital sums. Deal not unjustly, and you shall not be dealt with unjustly"* (Al-Baqarah 2:279). In a ḥadīth qudsi reported by Abu Dharr, the Prophet (peace be upon him) quoted Allah as saying: *"O My servants, I have forbidden injustice for Myself and made it forbidden among you, so do not wrong one another*[603]*."*

Riba as a Broader Topic:

Riba has a broader meaning, as indicated in the Prophetic ḥadīth: *"Usury has seventy-three categories; the least of them in sin is like that of a man who marries his mother, and the gravest form of usury is the violation of a Muslim's honor."* (Ṣaḥīḥ al-Jāmiʿ: 3539)

[602] Tafsir Al-Alusi: Surah An-Nisa: Verse 161.
[603] Sahih Muslim: Hadith: 6572.

The complexity of this topic was acknowledged by the second Caliph, ʿUmar ibn al-Khaṭṭāb (RA), who said: *"There are three matters I wish the Messenger of Allah (peace be upon him) had explained to us definitively: inheritance involving the grandfather, the issue of Kalālah, and some matters about Riba*[604]*."*

Recognizing the broader scope of Riba — encompassing financial and social violations — helps explain why ʿUmar regarded it as one of the most challenging issues in Islamic law and underscores the need for continued rigorous study of its specific applications.

In this study, however, the focus will be on *Riba* in financial transactions rather than its broader conceptual definition. We will begin by presenting a range of scholarly perspectives on selected issues related to *Riba*, followed by a detailed discussion of its nature and practical implications.

Besides establishing the prohibition of *Ribā* through scriptural evidence, this study will also highlight its unacceptability from a mathematical perspective, supported by practical examples.

Topic 1: Opinions on Issues Concerning Usury

Scholars have unanimously agreed on the application of Riba (usury) to six specific categories, based on the authentic hadith of the Prophet (peace be upon him). Ubadah ibn al-Ṣāmit reported that the Messenger of Allah (peace be upon him) said:

"Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt — like for like, equal for equal, hand to hand. If these types differ, then sell as you wish, provided it is hand-to-hand[605]*."*

However, jurists have differed on whether the prohibition of *Riba* extends beyond these six categories. Two primary opinions have emerged:

[604] Sahih Muslim: Hadith: 3032.
[605] Sahih Muslim: Hadith: 4063.

1. Usury is Limited to the Six Items

According to this view, the prohibition of Riba is confined to the six categories mentioned explicitly in the hadith and does not extend beyond them. Among those who held this opinion was Ibn ʿAqīl, a companion of Imam Aḥmad. He stated:

"Because scholars differed on the underlying rationale (ʿillah) for usury, it applies only to the six items. When their rationales conflicted, they were invalidated. Therefore, we return to the final position, which is that Riba is restricted to these six items[606]."

Ibn Ḥazm similarly maintained:
"In sales and salam transactions, Riba is only impermissible in six items: dates, wheat, barley, salt, gold, and silver. In contrast, in loan (Qarḍ) transactions, Riba is prohibited in everything[607]."

According to this view, in loan-based contracts, it is impermissible, for example, to lend one pen in exchange for two pens. However, in sales transactions, such an exchange would be permissible, as pens are not included among the six prohibited items.

2. Usury Extends Beyond the Six Items

The majority of jurists, including the four Imams, held that the prohibition of Riba is not confined to the six items mentioned in the hadith but extends to other commodities. Shaykh Muḥammad al-Mukhtār al-Shanqīṭī states:

"As for the categories on which Islamic law is silent, the majority of the early Muslims — including the four imams — held that usury applies to them, but subject to certain conditions[608]."

[606] Al-Sharh Al-Mumti' by Ibn ʿUthaymīn: Vol. 8, p. 395.
[607] Al-Muhalla by Ibn Hazm: Vol. 8, p. 401.
[608] Sharh Zad al-Mustaqni' by Muhammad al-Mukhtar al-Shanqeeti: p. 3046.

This indicates that, although there are six textual categories, the underlying causes of prohibition (ʿilal) extend the application of Riba to other types of goods and transactions. However, scholars have differed regarding what precisely constitutes the effective cause of prohibition.

Al-Māwardī summarizes the differing views across various schools:

"**First (Muḥammad ibn Sīrīn):** Riba applies to all kinds (ajnās) of goods when exchanged unequally — even dust for dust. **Second (Al-Ḥasan al-Baṣrī):** The cause is benefit within the same kind — e.g., selling one garment worth one dinar for two garments of the same worth is permissible, but not one garment for another worth double. **Third (Saʿīd ibn Jubayr):** The cause is similarity of benefit within kinds — thus, exchanging unequal amounts of wheat for barley is impermissible due to their comparable benefit. **Fourth (Rabīʿah):** The cause is goods subject to zakāt — Riba applies to any commodity upon which zakāt is due, such as livestock and crops. **Fifth (Mālikī School):** The cause is non-perishable foodstuff — Riba applies to stored food, excluding perishable foods like fruits or non-food items such as meat. **Sixth (Abū Ḥanīfah):** The cause is goods measured by volume or weight — thus, Riba applies to any commodity sold by measure, regardless of edibility, and is not applied to goods that are neither weighed nor measured. **Seventh (Sa'īd ibn al-Musayyab and al-Shāfiʿī - early opinion):** The cause is measured or weighed edible goods. **Eighth (Al-Shāfi'i - new opinion):** The cause is simply edibility, even if not measured. This view is extended to include water as a subject of Riba[609]."

From the above, it is clear that the majority of jurists maintain that Riba is not limited to the six textual items but applies to other goods and transactions, reflecting their differing analyses of the effective cause of prohibition.

3. Opinions on Hadiths Concerning Usury

Further differences of opinion among scholars relate to the interpretation of specific hadiths concerning Riba, including:

[609] Bahr al-Madhhab (Fiqh al-Shafi'i) by al-Ruyani: Vol. 4, pp. 403-409.

1. Al-Barā ibn ʿĀzib reported that the Prophet ﷺ said: "There is no problem with what is exchanged hand to hand, but what is Nasi'ah, then it is Riba[610]."
2. Usāmah ibn Zayd narrated that the Prophet ﷺ said: "Riba is in the Nasi'ah[611]."
   Ibn Abbās also reported that Usāmah informed him that the Prophet ﷺ said: *"There is no Riba except in the Nasi'ah[612]."*
   Some scholars have argued that this hadith is abrogated (mansūkh), while others reject the notion of abrogation. Another interpretation is that the hadith emphasizes the severity of Riba al-Nasi'ah as the most egregious form.
3. Samurah ibn Jundub reported: *"The Prophet ﷺ forbade the exchange of one animal for another on credit (Nasi'ah)[613]."*
4. Jābir ibn ʿAbdullāh narrated: *"Two animals in exchange for one is not permitted if deferred (Nasi'ah), but there is no harm if exchanged hand to hand[614]."*
5. In Sunan Abī Dāwūd, it is reported: *"The Prophet ﷺ permitted the sale of ʿArāyā for dates and fresh dates[615]."*
   Some scholars consider *ʿArāyā* an exception to the general principle of qiyās (analogy) because qiyās would require the fruit to be detached (like in a sale) before it could be considered a valid transaction. However, others argue that the permission in *ʿArāyā* transactions does not contradict the prohibition of Riba, as it does not fall under the definition of usurious exchange.

To sum up, these narrations may appear contradictory at first glance; however, a careful and coherent understanding of the concept of Riba shows that there is no real contradiction — only a misconception, which will be clarified in the following sections.

---

[610] Sahih Muslim: Hadith: 4071.
[611] Sahih Muslim: Hadith: 4091.
[612] Sahih al-Bukhari: Hadith: 2178.
[613] Sahih Sunan Abi Da'ud: Grade: Sahih (Albani): Hadith: 3356.
[614] Sahih Sunan Al-Tirmidhi: Grade: Sahih (Albani): Hadith: 1238. Vol. 2, p. 21.
[615] Sahih Sunan Abi Da'ud: Grade: Sahih (Albani): Vol. 2, p. 342. No. 3362.

Topic 2: Riba Means Increase or Excess

In the preceding discussion, we examined the jurisprudential differences concerning *Riba* (usury), particularly the varying views regarding its underlying cause (*ʿillah*). To better understand the concept, it is necessary to begin with a linguistic definition of Riba before addressing these differences. Since the Qur'an was revealed in the Arabic language, the linguistic meaning of terms holds foundational importance in their interpretation. Allah Almighty says:

> *"And indeed, it is a revelation from the Lord of the worlds... In a clear Arabic language."* (Shu'arāʾ: 192–195)

Based on this principle, any term used in the Qur'an and Sunnah must first be understood according to its original Arabic usage, and this takes precedence over technical jurisprudential definitions. Accordingly, scholars have defined *Riba* in the Arabic language as a noun denoting *increase* and *excess*. Al-Ruyānī stated:

"Usury (Riba) is a noun for increase (Ziyādah) and excess (Faḍl), based on both the Arabic language and Islamic law[616]*."*

In this statement, Al-Ruyānī refers to three interrelated terms: **Riba** (usury), **Ziyādah** (increase), and **Faḍl** (excess). Each of these terms appears in the authentic Prophetic Sunnah, reinforcing their linguistic connection to the concept of usury.

1. **Riba** is used in the Prophet's ﷺ rebuke to Bilāl when he exchanged one *ṣāʿ* of dates for two *ṣāʿs*. The Prophet said: *"Beware! This is definitely Riba! Do not do that*[617]*!"*
2. **Ziyādah** (increase) is found in the hadith:
   "Do not buy gold for gold except like for like, with no Ziyādah between them and no delay[618]*."*

[616] Bahr al-Madhhab (Fiqh al-Shafi'i) by al-Ruyani: Vol. 4, p. 401.
[617] Sahih Muslim: Hadith: 4083.
[618] Sahih Sunan Ibn Majah: Hadith: 18. Vol. 1, p. 24.

3. **Faḍl** (excess) is used in the hadith:
   "A dinar for a dinar — there is no Faḍl between them; and a dirham for a dirham — there is no Faḍl between them[619]*."*

These expressions illustrate that in Arabic, the term *Faḍl* or *Ziyādah* refers to one thing having more quantity, quality, or value than another.

For example, when it is said that a person has *Faḍl* over others, it means that the person possesses some advantage or excellence. **Hashiyat al-ʿAdawi** states:

"So-and-so is among the people of Faḍl, i.e., among the people of Ziyādah (increase)[620]*."* This refers to individuals distinguished by their closeness to Allah and their elevated rank through moral and spiritual excellence, which results in increased good deeds and nearness to Allah.

Likewise, the statement "**Knowledge has *Faḍl* over wealth**" signifies that knowledge is ultimately more beneficial and superior than material wealth. **Ibn Ḥajar** said in Fatḥ al-Bārī: *"Chapter on the Faḍl of knowledge: here Faḍl means Ziyādah (increase)*[621]*."* The chapter discusses *Faḍl* as the surplus or added value derived from knowledge — both religious and worldly — emphasizing its transformative impact on one's status, understanding, and righteous action.

Similarly, the saying "A dirham for a dirham, there is no *Faḍl* between them" means that one dirham must not exceed the other[622]; they must be equal in value, with no excess or advantage favoring one side.

Al-Ruyānī concluded:
"If Riba, as we have explained, is a term for excess in both language and Islamic law, then the generality of the Qur'anic verse indicates the prohibition

[619] Sahih Muslim: Hadith: 4069.
[620] Hashiyat Al-Adawi: Vol. 4, p. 395.
[621] See: Fath al-Bari by Ibn Hajr al-Asqalani: Bab Fadl al-Ilm (knowledge).
[622] See: Awjaz Al-Masalik ila Muwatta Malik: Vol. 12, p. 526.

of Faḍl (excess) and Ziyādah (increase), except where specific evidence establishes otherwise[623]*."*

Subtopic 1: Riba from a Mathematical Perspective

Imagine being asked the following question on a mathematics exam: **Which of the following is correct?**

(A) 1 = 1

(B) 1 = 2

The correct answer, of course, is (A). This basic principle of equality also applies in real-world transactions. If someone exchanges one unit of currency, such as a dirham, for another of the same type, the logical and fair exchange must be one for one. Mathematically speaking, one dirham equals one dirham (1 = 1); it does not equal two dirhams (1 ≠ 2). Hence, from a purely mathematical standpoint, exchanging one for two of the same kind is unjustified and logically false.

This principle of balance and equality is similarly illustrated in the mechanics of a physical scale. When a scale is used deceitfully — whether by tampering or by design — it constitutes a form of cheating, as it gives a false reading that benefits one party unfairly. The Prophet ﷺ emphasized this concept of fairness. ʿUbādah ibn al-Ṣāmit reported that the Messenger of Allah ﷺ said:

"Gold, equal amounts on each side of the scale…[624]"

This hadith invokes the concept of equilibrium, reinforcing the idea that exchanges must be equal in value and weight.

Imam al-Shāfiʿī stated in *Al-Umm*:

[623] Bahr al-Madhhab by Al-Ruayani: Vol. 4, p. 401.
[624] Sahih Sunan An-Nasa'i: Vol. 3, p. 228. Hadith: 4580.

"Balancing means that one person puts his gold on one scale and another person puts his gold on the other scale. When the balance is even, he takes and gives[625]."

This, then, is the essence of justice in trade: an exchange based on equivalence, where neither party receives an unjustified surplus.

Al-Fakhr al-Rāzī, in his *Tafsīr* (on Sūrat al-Baqarah: 275), commented:
"One reason for the prohibition of usury is that it entails taking a person's wealth without compensation. When someone sells one dirham for two — whether in cash or deferred — they gain an extra dirham without giving anything in return. Yet a person's wealth is tied to their essential needs and carries great sanctity."

From this standpoint, the equation **y = y** reflects a valid transaction, whereas **y = 2y** does not. The former denotes a fair and equal exchange. The latter represents *Riba* — an inequitable increase without compensation — and is therefore invalid in both logic and law.

To illustrate further:

- Exchanging **a dinar for a dinar** is valid, mathematically represented as **y = y**.
- Exchanging **a dinar for two dinars**, without a differing kind, results in **y = 2y**, which is mathematically invalid and religiously impermissible.

Consider now when someone sells a commodity for dirhams (price). This equation would be: **x = y**, which is valid because the item and the price belong to different categories (*jins*). Similarly, **x = 2y** is valid because they denote different kinds.

[625] Al-Umm of Imam al Shafi'i: Vol. 4, p. 64.

Hadith application

Let us now relate this to the Prophetic Sunnah:

- **First Equation: x = x (same kind, equal → sale valid → mathematically valid).** This aligns with the Prophet's statement: "Gold for gold, like for like" and "Wheat for wheat, like for like."
- **Second Equation: x = y (different kinds → sale valid → mathematically valid).** This is valid because the items differ in kind, such as gold (x) for silver (y), or wheat (x) for barley (y). The Prophet (peace be upon him) said: "If the types differ, then sell as you wish." Accordingly, whether expressed as x = 2y or 2x = y, the transaction remains valid, since the items differ in kind.
- **Third Equation: x = 2x (same kind, unequal → sale invalid → mathematically invalid).** Here, **x** denotes the category (e.g., dates), while the coefficient '**2**' denotes quantity. Thus, x = 2x illustrates the case of exchanging one ṣāʿ of dates for two ṣāʿs of the same kind. This is invalid, as confirmed by the Prophet's warning to Bilāl: "Beware! This is definitely Riba! Do not do that."

From these examples, it becomes clear that Riba is not only prohibited in Islamic law but also contradicts fundamental principles of mathematics and logic; x = 2x is an illogical equation that reflects a prohibited form of increase. This reasoning affirms the consistency between Islamic legal injunctions and rational principles of fairness and equality.

Important Point

Economic and educational systems need to function in harmony. Contradiction arises when the mathematics taught in academia does not align with the practices of financial institutions. An incorrect equation — such as *x = 2x* — would never be accepted in an academic setting, yet similar reasoning is sometimes applied in financial practice under the heading of "interest." Robust and coherent principles are essential to both academic disciplines and financial transactions; without them, the Qur'anic reproach becomes applicable: *"O you who believe, why do you say what you do not do?"* (Saff: 2).

Subtopic 2: Riba Is Not Limited to Six Categories

While some jurists restrict the prohibition of usury (Riba) to the six specific items mentioned in the authentic hadith, the majority of scholars maintain that its application extends beyond these six categories — a view supported by both reason and Sharīʿa evidence.

From a mathematical perspective, the principle is straightforward: *x equals x*. In practical terms, this means that one dirham equals one dirham — but not two dirhams. It is well-established that $x \neq 2x$. Muḥammad ibn Sīrīn affirmed that Riba based on kind (*jins*) applies to all types of goods when exchanged unequally, even *dust for dust*[626].

Thematic Agreement Across the Jurists

While scholars have differed on the specific causes (*ʻillah*) and categories to which the prohibition of Riba applies, a closer examination reveals a remarkable thematic convergence in their rulings. The following statements from various scholars affirm that the prohibition of Riba encompasses any unjust increase when exchanging items of the same kind — egg for egg, cotton for cotton, or dust for dust — where equivalence (‘like for like’) must be maintained.

Shaykh Muḥammad al-Mukhtār al-Shanqīṭī explains:
“As for the categories on which Islamic law is silent, the majority of the early Muslims — including the four imams — held that Riba applies to them, but subject to certain conditions... The view of the majority is correct, because when the Prophet (peace be upon him) mentioned these items, he did so as principles that apply to other commodities as well[627]*.”*

This understanding is straightforward and is demonstrated through simple exchanges. For instance, exchanging *an egg for an egg* is permissible, but *an egg for two eggs* is not. Al-Qurṭubī states:

[626] Bahr al-Madhhab (Fiqh al-Shafi'i) by al-Ruyani: Vol. 4, pp. 403-409.
[627] Sharh Zad al-Mustaqni' by Muhammad al-Mukhtar al-Shanqeeti: p. 3046.

"Al-Shāfiʿī does not permit selling one egg for two eggs[628]."

The same applies to cotton for cotton or copper for copper. Abu Ḥanīfah and his companions said:

"It is not permissible to exchange iron for iron, brass for brass, or copper for copper, except ***one for one****. It is not permissible to exchange on credit[629]."*

Here, ***one for one*** means that 1 = 1, like for like.

Ibn Qudāmah, reporting from certain narrations of Imām Aḥmad, stated:

"Riba applies to all commodities that are measured by volume or weighed according to their type, whether they are foodstuffs or not, such as grains, lichen, lime, cotton, wool, flax, vars, henna, saffron, iron, copper, and the like[630]."

This implies that it is impermissible to sell cotton for cotton, except like for like, or wool for wool, except like for like, and so on.

Likewise, Imām Mālik stated:
"It is not permissible to sell one fils for two fils hand to hand. In this ruling, fils is treated like gold or silver in its application. He further clarified: There is nothing wrong with selling fils for gold or silver[631]."

Sharīʿa-Compliant Alternative:
When people realize that Riba applies broadly to all commodities, they may ask: *What is the alternative?*

The answer is simple in Sharīʿa: conduct two separate transactions. One for selling, and another for buying. This solution is easy and supported by authentic guidance.

[628] Tafsir Al-Qurtubi: Al-Baqarah: 275.
[629] Al-Istidhkar by Ibn Abd al-Barr: Vol. 20, p. 165.
[630] Mughni Ibn Qudamah: Vol. 6, p. 55.
[631] Al-Istidhkar by Ibn Abd al-Barr: Vol. 20, p. 166.

Bilal (may Allah be pleased with him) once brought good-quality dates to the Prophet (peace be upon him). The Prophet asked, *"Where did you get these from?"* Bilal replied, *"We had some poor-quality dates, so I sold two sāʿs of them for one sāʿ of these."* The Prophet (peace be upon him) responded:

> *"Beware! This is definitely Riba! Do not do that! But if you want to buy dates, sell them (the dates you have) in a separate sale, then buy the dates (good dates) in a separate sale*[632]*."*

This incident illustrates the key principle: *Usury arises from increase and excess*. If there is an excess in an exchange of the same kind — dates for dates — this excess constitutes Riba.

Bilal was instructed to sell his dates at a price (e.g., 2 kg for 15 dirhams) and then to purchase high-quality dates (e.g., 1 kg for 15 dirhams) in a separate transaction. There was no need to exchange cash because the transactions could be settled through mutual set-off.

Gold Market — Daily Practice

In line with the instructions given to Bilāl, consider someone who wants to exchange old gold for new gold. The Sharīʿa-compliant method is as follows:

1. **Sell** the old gold for an agreed price.
2. **Purchase** the new gold in a separate, independent transaction using that price.

The Prophet's instruction to Bilāl supports this process: *"Sell [first], then buy with the proceeds*[633]*."*

The accounting best practices align with this approach. In financial records, each transaction is separately documented by the company:

- The first entry records a purchase at a known price (e.g., buying gold for 1,000 dirhams).

[632] Sahih Muslim: Hadith: 4083.
[633] Sahih Muslim: Hadith: 4083`.

- The second entry records a separate sale at a known price (e.g., selling gold for 1,200 dirhams).

Once both transactions are complete, the amounts are settled. In this example, one party owes 1,000 dirhams, and the other owes 1,200 dirhams. The net difference (200 dirhams) is paid in cash, while the remainder is settled by set-off.

In all cases, usury is avoided because each sale is independent, complete, and conducted at a fair and known price. Sharīʿa provides a clear framework on this issue; any apparent complication results from a misunderstanding in its interpretation.

Topic 3: Correcting Concepts in Some Hadiths

As mentioned earlier, scholars have differed in their interpretations of several Hadiths related to Riba (usury), including:

1. "There is no Riba in that which is hand to hand," and "Riba is in the Nasi'ah."
2. "Gold for silver is Riba unless it is done on the spot."
3. The prohibition of selling one animal for another on deferred terms (Nasi'ah).
4. "Food for food, like for like."

In this section, we clarify the intended meanings of these Hadiths and the context of the scholarly disagreement.

Subtopic 1: Riba is in the Nasi'ah

- Ibn Abbas reported: "Usamah informed me that the Prophet (peace be upon him) said: 'There is no Riba except in the Nasi'ah[634].'"
- Another version states: "Riba is in the Nasi'ah[635]."

[634] Sahih al-Bukhari: Hadith: 2178.
[635] Sahih Muslim: Hadith: 4091.

- And yet another version: "There is no Riba in that which is hand to hand[636]."

Ibn Hajar said in Fath al-Bari:

"The scholars agreed on the authenticity of Usamah's hadith, but they differed in reconciling it with the hadith of Abu Sa'id. Some claimed it was abrogated, though abrogation cannot be established by mere possibility. Others explained that 'There is no Riba' refers to the most severe and prohibited form of Riba, for which a stern warning is given[637]."

Some scholars, like Ibn Umar and Ibn Abbas, initially believed that exchanging one dirham for two dirhams was permissible if done on the spot, based on their understanding of Usamah's narration. However, they later abandoned this view upon hearing the hadith that prohibits any excess, even if the transaction is immediate[638].

Abu Salih al-Zayyat narrated:

"I heard Abu Sa'id al-Khudri say, 'A dinar for a dinar, and a dirham for a dirham — like for like. Whoever gives more or takes more has committed usury.' I said to him, 'Ibn Abbas says otherwise.' He replied, 'I met Ibn Abbas and asked him, "Is this something you heard from the Messenger of Allah (peace be upon him), or found in the Book of Allah?" He said, "No, but Usamah ibn Zayd told me that the Prophet (peace be upon him) said: 'Riba is in the Nasi'ah[639].'"'"

Clarification:

After presenting the points of disagreement, we now clarify the meanings of these narrations. This will demonstrate that the hadiths — 'Riba is in the Nasi'ah' and 'There is no Riba in that which is hand to hand' — have not been

[636] Sahih Muslim: Hadith: 4090.
[637] Fath al-Bari by Ibn Hajr: Hadith: 2178.
[638] Sharh Sahih Muslim by Ibn Hajr: Hadith: Al-Riba fi al-Nasi'ah.
[639] Sahih Muslim: Hadith: 4088.

abrogated. The essential question is: What type of transaction is each narration referring to?

A) "There is no Riba in that which is hand to hand."

This statement must be interpreted in context, like any Sharīʿa text. Consider the Quranic verse:

"And do not say: 'Three.'" (An-Nisā': 171)

This prohibits claiming that Allah is part of a trinity. It does not prohibit the number three in general. Similarly, understanding a Hadith outside its intended context leads to misapplication.

We have already established that Riba means excess or increase. One dirham equals one dirham — there is no excess. So, if you give and take a dirham, hand to hand, no Riba exists.

But if someone gives one dirham and takes two in return — even hand to hand — can the Hadith be used as proof that this is permissible? I.e., in such a case, can we use as evidence the saying of the Prophet (peace be upon him): *"There is no usury in that which is hand to hand*[640]*"?*

The answer is no. This Hadith does not apply to such a case. It refers only to situations where no increase occurs. Let's illustrate:

- **Example 1:** Exchanging one dirham for one dirham, hand to hand — This is permitted, and the Hadith applies.
- **Example 2:** Exchanging one dirham for two dirhams, even hand to hand — This involves an increase (Riba), so the Hadith does not apply here. The Prophet (peace be upon him) warned in such cases:

[640] See also: Sahih Muslim: Al-Barā ibn ʿĀzib reported that the Prophet (peace be upon him) said: "There is no problem with what is exchanged hand to hand, but what is Nasi'ah, then it is Riba." Hadith: 4071.

> *"Beware! This is Riba. Do not do that*[641]*."* Then he commanded restitution: *"Return it, for this is usury*[642]*."*

To sum up, the Hadith "There is no Riba in that which is hand to hand" applies **only** when there is no **excess**. It does not justify exchanging unequal amounts, even if done on the spot.

B) Riba Is in the Nasi'ah

Previously, we provided examples related to the Hadith narrated by Usama ibn Zayd: *"There is no Riba in that which is hand to hand."* Now, we turn to the second narration: *"Riba is in the Nasi'ah."*

Example:
Suppose someone sells one dirham for two dirhams, delivering the one dirham immediately while the two dirhams are to be paid later.

In this transaction, there are two components:

- The first is the immediate delivery of one dirham.
- The second is the deferred payment of two dirhams.

Question:
Where does the Riba (excess) occur — in the part that was delivered, or in the deferred part that is yet to be received?

Answer:
Clearly, the Riba lies in the deferred portion — the *Nasi'ah*. That is why we say: *"Riba is in the Nasi'ah."*

It is important to clarify that *Nasi'ah* does not itself mean Riba or "excess." Rather, *Nasi'ah* refers to **delay** or **deferred payment** in the context of sales. Therefore, *Riba al-Nasi'ah* implies that **the increase or excess lies in the delay**, i.e., in the part of the transaction that remains unpaid. So, if one sells a

[641] Sahih Muslim: Hadith: 4083.
[642] Sahih Muslim: Hadith: 4084.

dirham for two dirhams on a deferred basis, the Riba is in the delayed payment, not in the part already delivered.

Ibn Abbas explained this concept in light of the Hadith of Usama ibn Zayd: *"Riba is only in the debt."* He clarified its meaning as: *"[It is like] one dirham for two dirhams*[643]*."* That is, the Riba exists in the increase attached to deferred debt.

The same applies to any interest charged on a debt that is due but unpaid — this too falls under *Riba in the Nasi'ah*.

To sum up

When the hadith applies

- If someone pays one dirham now to receive two dirhams later, the Riba (excess) is in the Nasī'ah. It involves an excess tied to deferred payment. In this case, we say: *"Riba is in the Nasī'ah — and what is in the Nasī'ah is impermissible*[644]*."*

When the hadith does not apply

- If someone exchanges one dirham for two dirhams immediately (*hand-to-hand*), this is Riba in an immediate transaction. In such a case, we say: *"This is definitely Riba! Do not do that."* But we do **not** say: *"Riba is in the Nasī'ah."*

In all cases, **Riba is an increase or excess**, whether it appears in an immediate transaction (like exchanging one dirham for two hand-to-hand) or in a deferred one (like receiving two dirhams later for one dirham paid now). When the excess occurs in the delayed portion, we say: *"Riba is in the Nasi'ah."*

Subtopic 2: Gold, Silver, and Other Items

Hadiths — reports of the sayings, actions, and approvals of the Prophet (peace be upon him) — vary in their level of authenticity. Scholars have developed a classification system based on factors such as the reliability of the narrators

[643] Sunan al-Darimi (Sheikh Hussein Salim Asad said: The Hadith is authentic/Sahih), Hadith: 2622, pp. 1680-1681.

[644] Sahih al-Bukhari: Hadith: 3939.

and the continuity of the transmission chain. Terms like *Mubham* (ambiguous), *Mubayyan* (clarified), *Marfu'* (attributed to the Prophet), and *Mawquf* (attributed to a companion) reflect how hadith are categorized by content and source. This classification often leads to differing scholarly views on the authenticity and legal application of a given hadith.

Differences in wording between narrations may arise due to memory discrepancies among transmitters. Nevertheless, scholars have diligently examined and weighed these reports to determine their authenticity.

Among the hadiths on Riba (usury) that have been subject to scholarly debate is the narration of Mālik ibn Aws, reported from ʿUmar ibn al-Khaṭṭāb (may Allah be pleased with him). The variations are as follows:

- Mālik ibn Aws narrated that ʿUmar ibn al-Khaṭṭāb said: *"The Messenger of Allah (peace be upon him) said, 'Gold for gold is Riba unless it is hand-to-hand*[645]*.'"*
- In another version (e.g., in Sunan al-Dārimī), he reported: *"I heard the Messenger of Allah (peace be upon him) say, 'Gold for gold, hand-to-hand. There is no Faḍl (excess) between them*[646]*.'"*
  This version emphasizes the condition of equality (*like-for-like*) and immediate exchange.
- In some narrations (e.g., Sunan Abī Dāwūd), it is stated: *"Gold for silver is Riba unless it is hand-to-hand."* Muḥammad al-ʿĀbādī in *ʿAwn al-Maʿbūd* noted: *"This version includes 'gold for silver (fiḍḍah)' even if they are equal. Some versions state 'gold for gold,' while others say 'gold for silver (wariq) is Riba unless it is hand-to-hand*[647]*.'"*

These differing wordings have led to scholarly scrutiny. The version stating "gold for gold is Riba unless hand-to-hand, like-for-like" aligns with the broader framework of Sharīʿa regarding Riba. In contrast, the version that

[645] Sahih al-Bukhari: Hadith: 2174.
[646] Sunan al-Darimi: Hadith: 2620, pp. 1679-1680.
[647] Awn al-Ma'bud (Sharh Sunan Abi Dawud) by Muhammad Abadi: Hadith: 3346, p. 1440.

reads "gold for silver is Riba" appears to contradict other well-established hadiths on the subject.

Some scholars pointed out that this Hadith may be *mawqūf* (attributed to Umar himself) rather than a direct report from the Prophet (*marfūʿ*). In this context, Imām al-Ṭabarī said:

"In our view, this is an authentic hadith with no flaw in its chain. However, others may consider it weak for two reasons: First, the version from a narrator other than Mālik ibn Aws attributes the statement to ʿUmar, not to the Prophet. Second, it is not known that ʿUmar transmitted this hadith from the Prophet (peace be upon him) through any other chain besides that of Mālik ibn Aws[648]*."*

To determine which version is more valid, it is helpful to review the other authentic hadiths on Riba involving different types (*ajnās*), especially gold and silver.

Riba Does Not Apply to Different Kinds

Scholars agree that usury applies only when the items are of the same type (e.g., gold for gold), based on the following reports:

- ʿUbādah ibn al-Ṣāmit reported that the Prophet (peace be upon him) said:
  "There is nothing wrong with selling gold for silver, giving more silver than gold, provided it is hand-to-hand[649]*."*
  This hadith confirms that such an exchange (gold for silver) is not considered Riba, since the items differ in type. Riba applies only when the items exchanged are of the same kind.
- Abū Saʿīd al-Khudrī narrated that the Prophet (peace be upon him) said:
  "Do not sell ***gold for gold*** *except like-for-like, and do not increase one over the other. Do not sell silver for silver except like-for-like, and do*

[648] Tahdhib al-Athar by Al-Tabari: p. 731.
[649] Sahih Sunan Abi Dawud: Vol. 2, pp. 339-340, No. 3349.

not increase one over the other. Do not sell the absent for the present[650]*."*

- **Mālik ibn Aws** also reported from ʿ**Umar**:
  *"I heard the Messenger of Allah (peace be upon him) say, '**Gold for gold**, hand-to-hand, like-for-like*[651]*.'"*
- ʿUmar reported that he heard the Prophet (peace be upon him) say:
  *"**A dinar for a dinar**, hand-to-hand; a dirham for a dirham, hand-to-hand; wheat for wheat, hand-to-hand; dates for dates, hand-to-hand; barley for barley, **hand-to-hand — like-for-like***[652]*."*
- In another narration, ʿ**Umar** stated:
  "A dinar for a dinar, and a dirham for a dirham, like-for-like." He added, "This is the covenant of our Prophet (peace be upon him) to us[653]*."*
- Imām Mālik recorded in *al-Muwaṭṭa'* that ʿ**Umar** said:
  *"Do not sell **gold for gold** except like-for-like, and do not increase one over the other. Do not sell silver for silver except like-for-like*[654]*."*

All of these narrations — whether from the Prophet directly or from ʿUmar — are consistent with the foundational principles of Riba: it is prohibited when there is both excess and sameness in type. Hence, these authentic narrations support the interpretation that selling gold for silver is not considered Riba, even if the amounts differ.

Subtopic 3: Thaman and Muthman Applications

We have seen in previous discussions how mathematics provides a clear scale for identifying Riba in cases of excess, such as the invalid equation x = 2x. Similarly, the categories of **thaman** (price) and **muthman** (commodity) help determine when specific rules apply — such as the requirement of hand-to-hand exchange.

[650] Sahih Al-Bukhari: Hadith: 2177.
[651] Sunan Al-Darimi: Hadith: 2620. pp. 1679-1680.
[652] Tahdhib al-Athar by Al-Tabari: p. 729.
[653] Sahih Sunan al-Nasa'i: Vol. 3, pp. 228-229, No. 4582.
[654] Al-Muwatta' by Imam Malik: Hadith: 2338, Vol. 2, pp. 917-918.

Muthman vs Thaman — Hadith Evidence

Ubadah ibn al-Samit reported that the Messenger of Allah (peace be upon him) said:

"Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt — like for like, equal for equal, hand to hand. But if these types differ, then sell them however you wish, provided it is hand-to-hand[655]*."*

This hadith lists six commodities — gold, silver, wheat, barley, dates, and salt — where if exchanged for each other within the same category, they must be exchanged equally and hand to hand. However, if the types differ (e.g., gold for wheat), the exchange is allowed with unequal amounts, provided it is immediate.

Notably, dinars and dirhams (i.e., coined currency or modern equivalents) are not explicitly mentioned in this hadith. The reason is that if someone sells a commodity like wheat for dinars or dirhams, it is permissible for the payment to be either immediate or deferred. The Prophet (peace be upon him) himself purchased food on credit, which indicates the permissibility of selling wheat for dinars with deferred payment. However, wheat for gold (or silver) must be hand-to-hand, as stated in the hadith.

This distinction between **gold (as a tradable commodity)** and **dinar (as a price medium)** is further supported by the hadith of Faḍāla ibn Ubayd:

"On the day of Khaybar, I bought a necklace for twelve dinars that contained both gold and beads. I took it apart and found that the gold in it weighed more than twelve dinars. I mentioned this to the Prophet (peace be upon him), and he said: 'It should not be sold until it is separated[656]*.'"*

This hadith indicates that the gold necklace is considered a **commodity (muthman)**, while the dinars with which it was purchased are considered the **price (thaman)**. The Prophet (peace be upon him) did not require equal

[655] Sahih Muslim: 4063.
[656] Sahih Muslim: 1591, p. 746.

weight or immediate exchange in this case, confirming that dinars function as a medium of exchange, not as a commodity.

Ibn al-Qayyim clarified this by saying:
"The ornament, through craftsmanship, became similar to clothing and goods (muthman), not prices (thaman). For this reason, zakāt is not obligatory on it, and Riba does not apply between it and prices, just as Riba does not apply between prices and other goods[657]*."*

Thus, there is a difference between **goods (muthman)** and **prices (thaman)**. Likewise, paper currencies today function as thaman, while plain paper is merely a good (muthman).

Based on this, we can categorize transactions into three types:

1. Selling Thaman for Thaman (Price for Price)
This involves currency exchange — such as dinar for dinar or dinar for dirham. The evidences are the hadiths:

"A dinar for a dinar, a dirham for a dirham — equal for equal, hand to hand[658]*."*

Abu al-Minhāl reported:
"I asked al-Bara' ibn 'Azib and Zayd ibn Arqam about currency exchange (sarf). They said, 'We were merchants during the time of the Messenger of Allah (peace be upon him), and we asked him about it. He said: If it is hand-to-hand, then there is no problem; but if it is deferred, then it is invalid[659]*.'"*

2. Selling Muthman for Muthman (Goods for Goods)
This refers to the barter of goods or commodities. The evidence is the hadith of Ubādah ibn al-Sāmit:

[657] I'lam al-Muwaqqi'in by Ibn al-Qayyim: Vol. 3, p. 407.
[658] Sahih Sunan Ibn Majah: Grade: Sahih, (Albani): No. 1848, Vol. 2, p. 238.
[659] Sahih Sunan Al-Nasa'i: Grade: Sahih (Albani): No. 4590, Vol. 3, p. 231.

"Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt, like-for-like, equal for equal, hand-to-hand. If these types differ, then sell them however you wish, provided it is hand-to-hand[660]*."*

For example, selling wheat for barley or gold for silver requires hand-to-hand exchange, but **equality is not necessary if the kinds differ**.

Shaykh Ibn 'Uthaymeen explained:
"If you sell wheat for barley or dates for barley, more or less is fine, but it must be hand to hand. The same applies to gold for wheat or silver for barley. The increase is permissible, but an immediate exchange is required[661]*."*

3. Selling Muthman for Thaman (Goods for Price)
This is the standard sale transaction (e.g., selling food for money). The hadith of Aisha (may Allah be pleased with her) states:

"The Messenger of Allah (peace be upon him) bought food from a Jew on credit and mortgaged his iron armor as collateral[662]*."*

This demonstrates the permissibility of deferred payment when selling a commodity for a monetary value.

Ibn Qudāmah said in *al-Kāfi*:
"There is no disagreement about the permissibility of buying goods for a price — whether by weight or otherwise — because prices measure the capital[663]*."*

Summary:

- **Muthman for muthman, same kind (e.g., gold for gold)** → Must be equal and hand-to-hand.
- **Muthman for muthman, different kind (e.g., gold for silver)** → May be unequal, but must be hand-to-hand.

[660] Sahih Muslim: Hadith: 4063.
[661] Fath Thi al-Jalal wa al-Ikram by Ibn ʿUthaymīn: Vol. 4, p. 18.
[662] Sahih Muslim: Hadith: 4116.
[663] Al-Kafi by Ibn Qudamah: Vol. 3, p. 99.

- **Muthman for thaman** (**goods for price,** e.g., wheat for dinars) → Inequality and delay are both permitted, since thaman serves as a flexible and neutral medium of exchange.
- **Thaman for thaman** (**price for price,** e.g., dirhams for dinars) → Inequality is permitted, but the exchange must be hand-to-hand (no deferment). Although price (thaman) denotes monetary value, it may function as *muthman for muthman* in cases of currency exchange (ṣarf) or price-for-price transactions; for this reason, the hand-to-hand condition applies. What distinguishes a price-for-price transaction from an ordinary sale is that each party appears, in effect, to function as both buyer and seller, such that one cannot identify who is the buyer and who is the seller.

Important Point
Because price (thaman) has a measurable monetary value, some jurists — such as the Shāfiʿī school — hold that if two partners form a company by contributing fixed assets (like cars or real estate), then to establish a true partnership *each partner should first purchase a share of the other's asset*, so both end up with joint ownership of all assets. This is based on their view of monetary capital (thaman) as a measurable and neutral standard of value.

Subtopic 4: Selling an Animal for Another on Credit

Having established that **mathematics** serves as the yardstick for identifying excess (Riba) — for example, the invalid equation $x = 2x$ — and that **thaman and muthman** function as the legal categories that determine when hand-to-hand exchange is required or when delay is permissible, we can now approach the juristic disagreements on the interpretation of certain hadiths:

Is it permissible to sell an animal for an animal on credit, or only hand-to-hand, and with or without excess?

Samurah reported:
"The Prophet (peace be upon him) forbade the sale of one animal for another on credit[664]*."*

[664] Sahih Sunan Abi Dawud: Hadith: 3356.

Jābir ibn ʿAbd Allāh stated that the Messenger of Allah (peace be upon him) said:

"Two animals for one on credit is not permissible, but there is nothing wrong with them being sold hand-to-hand[665]*."*

Ibn Qudāmah explains:
"Narrations differed regarding the prohibition of deferred exchanges in non-measured and non-weighed items, with four views:

1. Delay is forbidden in **food for food only**. This is the Shāfiʿī view. Qāḍī chose this because ʿAbdullāh ibn ʿAmr used to take one camel for two until the charity camels arrived.
2. Delay is forbidden in every Māl (property) exchanged for its kind — such as an **animal for an animal**, or **clothes for clothes** — but not when the kinds differ. This is the Ḥanafī view. Samurah narrated that the Prophet (peace be upon him) forbade the sale of one animal for another on credit.
3. Delay is forbidden when the same type of goods is exchanged **with excess** (e.g., **an animal for two animals** on credit). Jābir narrated that the Prophet (peace be upon him) said: "Two animals for one animal on credit is forbidden, but there is nothing wrong with it hand-to-hand." The Prophet was also asked about selling a horse for horses or a fine camel for camels. He said, "There is nothing wrong with it if it is hand-to-hand."
4. Delay is forbidden in any Māl sold for another Māl, whether of the same type or not[666]."

Authenticity of the hadiths

- The narration of ʿAbdullāh ibn ʿAmr (regarding camels for sadaqah) is weak (ḍaʿīf)[667], though some graded it ḥasan. Even if accepted, it conflicts with more authentic reports and thus cannot override them.
- The hadith "The Prophet forbade the sale of one animal for another on credit" is authentic (ṣaḥīḥ)[668].

[665] Sahih Sunan al-Tirmidhi: Hadith: 1238. Vol. 2, p. 21.
[666] Mughni Ibn Qudamah: Vol. 6, pp. 64-65.
[667] See: Sunan Abi Da'ud: No. 3357. Albani and other scholars said: "The Hadith is weak". See: Dha'eef Sunan Abi Dawud, p. 272.
[668] Sahih Sunan Abi Da'ud: Grade: Sahih (Albani), Hadith: 3356.

- The hadith "Two animals for one on credit is not permissible, but hand-to-hand is allowed" is also authentic (ṣaḥīḥ)[669].
- The hadith on selling a horse for horses is weak[670].

Practical implications of authentic hadiths

The authentic hadith, *"The Prophet (peace be upon him) forbade the sale of one animal for another on credit,"* aligns with other sound narrations:

- *"Do not sell the absent for the present[671]."*
- *"The Prophet forbade exchanging silver for gold on credit (nasīʾah)[672]."*

By analogy, just as gold cannot be sold for gold or for silver on credit, neither can a camel be sold for a camel — or for a cow — on credit.

From the perspective of *muthman* (commodity) versus *thaman* (price), animals are classified as commodities. Hence, they follow the same rulings as other commodities:

- If of the same type, the exchange must be *like-for-like* and *hand-to-hand*;
- If of different kinds, *hand-to-hand* with permissible excess[673].

Regarding the other authentic hadith, *"Two animals for one on credit is not permissible, but hand-to-hand is allowed[674],"* it conveys the same principle.

For example, selling a **camel for two cows (or vice versa)** on credit is impermissible, but hand-to-hand exchange is allowed — an exact application of this hadith where the kinds differ.

This parallels the case of food (wheat for barley):

---

669 Sahih Sunan al-Tirmidhi: Grade: Sahih (Albani), Hadith: 1238, Vol. 2, p. 21.
670 Musnad of Imam Ahmad: No. 5885, Vol. 10, p. 125. Shuaib al-Arna'ut said: "Its chain of transmission is weak". See also: Al-Silsilah al-Sahihah by Albani: Vol. 5, p. 539.
671 Sahih al-Bukhari: Hadith: 2177.
672 Sahih al-Bukhari: Hadith: 2249.
673 Sahih Muslim: "If these types differ, then sell them however you wish, provided it is hand-to-hand." No. 4063.
674 Sahih Sunan al-Tirmidhi - Grade: Sahih (Albani): Hadith: 1238, Vol. 2, p. 21.

The Prophet (peace be upon him) said: *"There is nothing wrong with exchanging wheat for barley,* ***two for one****, hand to hand*[675]*."*

Summary

It is permissible to sell an animal for another animal, or for two animals of a different kind, only if the exchange is hand-to-hand. On credit, such transactions are invalid. This reflects the general rule:

Delay is permitted only when goods are sold for a monetary price (thaman), not for goods of the same or different types (muthman for muthman).

Subtopic 5: Borrowing an Animal or an Item

Abu Rafiʿ reported that the Prophet (peace be upon him) borrowed a young camel. Later, the Prophet instructed him:

> *"O Abu Rafiʿ, repay this man his young camel."* Abu Rafiʿ replied that only a better camel (four-year-old or more) was available. The Prophet said: ***"Give it to him, for the best of people are those who repay their debts best***[676]***."***

This was a loan (Qarḍ) transaction. Some jurists, however, mistakenly conflated the permissible loan with the forbidden credit sale (Nasi'ah) of the same kind (e.g., selling a camel for a camel on credit), though the two contracts are fundamentally different.

Ibn al-Qayyim refutes:

> *"Some claim that Qarḍ (loan) contradicts analogy, but this stems from a mistaken comparison with a credit sale involving delayed repayment of the same type — an incorrect analogy*[677]*."*

[675] Sahih al-Jami' al-Saqir wa Ziyadatuh by Muhammad Nasir al-Din Albani: Hadith: 7183. See also: Sahih Sunan Abi Dawud: "Wheat for barley." No. 3349, Vol. 2, p. 339. Albani said: "It is authentic."

[676] Sahih Sunan Ibn Majah - Grade: Sahih (Albani): Hadith: 1865, Vol. 2, pp. 242-243.

[677] I'lam al-Muwaqqi'in by Ibn al-Qayyim: Vol. 3, p. 175.

Elaboration:
At first glance, one may wonder: *Why is it forbidden to sell a camel for a camel on credit, yet permissible to lend a camel, knowing that repayment will also be a camel?* The answer is straightforward: a sale contract is not like a loan contract. The essential differences between the two are as follows:

- **Performance in sales versus loan:** In a sale, the seller typically does not accept the same item back as repayment (fulfillment). By contrast, a loan (Qarḍ) presumes that repayment may be made with the very same item or its equivalent in kind — making such repayment fully consistent with its nature.
- **Exchange intrinsic to sales, but not to loans:** A sale, by definition, involves an exchange — one item is given up for another. In a loan, however, if the borrower returns the very same item, no exchange has occurred.

Thus, the ruling that *"It is not permissible to sell a camel for a camel on credit"* does not contradict the permissibility of lending a camel. Rather, it shows that confusing the two contracts — sale and loan — is both logically and legally incorrect.

Words are not just formalities — they determine the contract's nature. If someone says, "Lend me 100 dirhams for a month," it is a valid loan. But to say, "Sell me 100 dirhams for a month," contradicts both Sharīʿa and logical analogy. Therefore, it is not permissible to use the word "sale" in a "camel for camel" credit transaction, because such wording contradicts the very nature of sale, both rationally and legally.

As for Ribā, it is universally prohibited — even from a purely rational perspective. "Tooth for tooth" or "eye for eye" is neither a sale nor a loan. Yet it is never valid to say "tooth for two teeth," as this introduces unjust excess and is logically invalid. Likewise, a camel-for-two-camels transaction, whether framed as a sale or a loan, is impermissible.

Al-Qurtubi states regarding Riba in a loan:
"A loan means 'one for one' — the borrower repays the same amount as borrowed. The Muslim consensus, based on Prophetic guidance, is that ***stipulating any increase*** *renders the loan usurious[678]."*

Conclusion
A loan (Qarḍ) is a stand-alone contract, distinct from a sale. It is founded on benevolence rather than profit, and any stipulated increase in repayment is prohibited. At the same time, voluntary betterment in repayment is praiseworthy and not considered Riba. Thus, the loan contract harmonizes with both sound **analogy** and **divine law**.

Subtopic 6: Food for Food, Like-for-Like

This section addresses the rules of exchanging foodstuffs, particularly when exchanging items that may appear similar in certain aspects, such as food for food or a car for a car.

As discussed earlier, the way to avoid Riba in all such cases is simply to conduct the transaction as a proper sale — Muthman for Thaman (commodity for price).

Maʿmar ibn ʿAbdullah once sent his servant with a *ṣāʿ* of wheat, instructing him to sell it and then purchase barley with the proceeds. The servant instead exchanged the wheat directly for more than a *ṣāʿ* of barley. Upon his return, Maʿmar said to him, *"Why did you do that? Go and return it. Do not take anything except like-for-like, for I used to hear the Messenger of Allah (peace be upon him) say: 'Food for food, like-for-like[679].'"*

Maʿmar explained, *"Their food at that time was barley,"* hence "food for food" here refers to barley for barley — like for like. When someone remarked, *"Wheat is not like barley,"* Maʿmar replied, *"I fear it will be treated as similar."*

[678] Tafsir Al-Qurtubi: Surah al-Baqarah: 245.
[679] Sahih Muslim: Hadith: 4080

This indicates that Maʿmar exercised caution (*waraʿ*) to avoid even the slightest possibility of Riba. However, from the perspective of legal ruling (*ḥukm*), the servant's action was valid, as confirmed by authentic hadiths.

The Prophet (peace be upon him) said:

- *"There is nothing wrong with wheat for barley, two for one, hand-to-hand*[680]*."*
- *"If the types differ, then sell them however you wish, provided it is hand-to-hand*[681]*."*

Therefore, while *like-for-like* and *hand-to-hand* apply when the items are of the **same kind** (e.g., barley for barley), a **difference in type** (e.g., wheat for barley) allows inequality — **provided the exchange is immediate**.

As Ibn ʿAbd al-Barr explained:
"According to the majority of scholars, when food is exchanged for food of the same kind, it must be equal and hand-to-hand. And even when the kinds differ, delay is not permitted[682]*."*

This reinforces the broader principle drawn from the hadith of ʿUbādah ibn al-Ṣāmit: *"Gold for gold, silver for silver… like-for-like, hand-to-hand. But if these types differ, sell as you wish, provided it is hand-to-hand."*

Conclusion: The General Concept of Riba

The prohibition of Riba across all types of exchange discussed in this chapter **— whether involving currencies, animals, foodstuffs, or other forms of Māl —** is not arbitrary. The rules of equivalence and hand-to-hand delivery function as safeguards against exploitation and imbalance. This reflects a system rooted in fairness, logical coherence, and divine wisdom, affirming that the Sharīʿa does not oppose sound reasoning but builds upon it. The prohibition of Riba, therefore, is not only a religious mandate but also a universal economic principle.

[680] Sahih al-Jami' al-Saqir wa Ziyadatuh by Muhammad Nasir al-Din Albani: Hadith: 7183.
[681] Sahih Muslim: Hadith: 4063.
[682] Al-Tamhid by Ibn Abd al-Barr: Vol. 5, p. 294.

Section Two:
ʿArāyā: Fresh for Dry Dates

The term ʿArāyā refers to a specific type of transaction wherein fresh dates — still hanging on palm trees — are exchanged for dry dates already harvested and in possession.

Zayd ibn Thābit narrated:
"The Prophet (peace be upon him) permitted the sale of ʿArāyā — that is, dried dates for fresh dates[683]*."*

Al-Shirāzī explains: *"ʿArāyā is the sale of fresh dates on palm trees for dried dates, by estimation*[684]*."*

Some questions arise with respect to this issue, including the following: Is the ʿArāyā transaction an exception to the general prohibition of ribā, permitted only in cases of necessity? Or is it a lawful and sound transaction in its own right, fully consistent with Sharīʿa principles, rather than a mere dispensation granted under hardship? Additionally, this issue raises the question of whether there exists a conceptual similarity between "fruits on the tree" and *manfaʿah* (usufruct or benefit), insofar as both may serve as valid subjects of transactions, distinct from the rulings that apply to Māl in its basic form.

This section will explore the matter in two topics:

1. **Juristic Opinions on ʿArāyā**
2. **On the Right Track with ʿArāyā** — this illustrates the conceptual link between "fruits on the tree" and the notion of *manfaʿah* (usufruct or benefit) in Islamic jurisprudence.

[683] Sahih Sunan Abi Dawud: Grade: Sahih, (Albani): Vol. 2, p. 342.
[684] Al-Muhadhab by al-Shirazi: Vol. 3, p. 76.

Topic 1: Opinions on ʿArāyā

Scholars have differed on how to interpret the Prophet's permission of ʿArāyā[685], due to varying juristic understandings.

Al-Mawsūʿah al-Fiqhiyyah stated:
"Jurists differed regarding the permissibility of ʿArāyā and how to classify its ruling[686]*."*

The core questions include:

- Is ʿArāyā permitted only based on necessity (*ḥājah*)?
- Does it fall under the rulings of tangible goods (*ʿayān*) or of benefits and usufruct (*manāfiʿ*)?

First Opinion: ʿArāyā as an Exception Among Commodities

Some jurists regard ʿArāyā as an exception to the general prohibition of selling tangible goods (*ʿayān*) on credit or by estimation.

Ibn Rushd notes:
"Regarding sales transactions, they unanimously agreed that it is not permissible to sell assets (ʿayān) on credit; the seller must deliver the item immediately after concluding the deal[687]*."*

He adds:
"The majority hold that the sale of fruit is an exception, since fruit cannot dry completely at once. Beyond this, selling commodities on credit remains impermissible[688]*."*

---

[685] Sahih Sunan Abi Dawud (The Prophet, peace be upon him, permitted the sale of ʿArāyā, namely dried dates for fresh dates.): Grade: Sahih, (Albani): Vol. 2, p. 342.
[686] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 9, p. 169.
[687] Bidayat al-Mujtahid by Ibn Rushd: Vol. 2, p. 156.
[688] Bidayat al-Mujtahid by Ibn Rushd: Vol. 2, p. 151

This reasoning is based on the idea that since fruits on the tree cannot be dried instantly, estimating and selling them in exchange for dry dates becomes a necessary exception to the rule.

Ahmad al-Ḥijjāwī further states:
"The buyer has the right to keep the fruit until it is harvested and picked, and the seller is obligated to water it if necessary[689]*."*

From this, they concluded that since the transaction includes obligations beyond mere delivery, it must reflect a special case rather than a general rule. Accordingly, some have argued that selling fruit while still on the tree contradicts the standard analogies (qiyās) applied to the sale of tangible goods.

Second Opinion: ʿArāyā Falls Under Benefits and Usufruct (Manfaʿah)

Other jurists — including Ibn Taymiyyah, Badr al-Dīn al-ʿAynī, and others — reject the notion that ʿArāyā is merely a concession. Instead, they argue that fruits on the tree are akin to usufructs rather than tangible commodities. Ibn Taymiyyah explains:

"What the Sharīʿa principles indicate is that the assets (ʿayān) that continue to generate income sequentially, while their origin remains, are governed by the ruling on benefits (manāfiʿ), such as fruit and trees, and milk in animals. For this reason, this and that are equated in the case of endowments (waqf), since the principle is to confine the original asset while its benefits are utilized for the designated cause. So, the benefit must be used continuously while the origin remains[690]*."*

According to this view, fruits on the tree function more like *manfaʿah* — they are not yet harvested or isolated as tangible goods.

[689] Zaad Al-Mustaqni' by Ahmad Al-Hijjawi: p. 111.
[690] Majmu' Fatawa Ibn Taymiyyah: Vol. 20, p. 550. Badr al-Din al-Ayni said, "The assets that gradually generate income while their original form remains are considered benefits." Al-Binaya (Sharh al-Hidayah): Vol. 10, p. 289.

Understanding the profound Sharīʿa foundations of transactions such as ʿArāyā has practical implications that extend beyond academic circles. It ensures that Islamic finance is grounded in sound, enduring principles rather than temporary concessions. This helps promote greater consistency, confidence, and flexibility in global trade and commerce by enabling the diversification of Sharia-compliant products and contracts.

Topic 2: On the Right Track with ʿArāyā

Arāyā may share, in some aspects, rulings with commodities; however, it differs from them in other respects. It will be clear, in this study, that the Zakāt is due on trade goods, while Zakāt is not due on fruits on the tree, but rather on the day of harvest. There is no Hadd al-Sariqah (Theft penalty) for stealing fruits on the tops of palm trees, unlike if the fruit is stolen after it has reached the threshing floor. This demonstrates that it has the same ruling as Manāf'i (benefits or Usufruct), not that of the commodity, in these and other legal matters. This section discusses these issues in some detail.

Subtopic 1: ʿArāyā Is Not an Exception to Riba

We previously discussed Sharīʿa evidence on the prohibition of *Riba* in the exchange of similar items. Among these is the hadith narrated by Abū Hurayrah:

"Dates for dates, wheat for wheat, barley for barley, salt for salt — like-for-like, hand-to-hand. Whoever gives more or takes more has engaged in usury, except when the types differ[691]*."*

Similarly, when Bilāl exchanged one *ṣāʿ* of dates for two, the Prophet (peace be upon him) said: *"Beware! This is definitely Riba! Do not do that*[692]*!"*

This raises a **fundamental question**:

[691] Sahih Muslim: Hadith: 4066
[692] Sahih Muslim: Hadith: 4083.

If exchanging dates for dates is only permissible when equal and immediate, why was the sale of fresh dates for dry dates permitted in the case of ʿArāyā?

First, it is important to note that ʿArāyā is not a concession that contradicts standard analogy (qiyās). The claim that it does is incorrect and does not hold up under scrutiny when examined against sound juristic principles. Furthermore, when the Prophet (peace be upon him) permits something, it must necessarily align with sound analogy.

Ibn Taymiyyah clarified:
"The same applies to ʿArāyā as to what is similar in meaning. The truth is that nothing legislated in Sharīʿa contradicts sound analogy. Rather, any matter claimed to contradict analogy must involve a distinguishing feature that justifies a separate ruling. If another case shares that feature, it shares the same ruling. Otherwise, the two are not comparable[693]*."*

Two Different Scenarios for Date Transactions

1. When both types (fresh and dry dates) are already harvested and on the ground, the ruling is that they must be exchanged like-for-like, hand-to-hand, as a Māl transaction.
2. When fresh dates are still on the tree, and dry dates are on the ground, the transaction falls under ʿArāyā — an independent contract that is permitted.

Zayd ibn Thābit narrated:
"The Prophet (peace be upon him) permitted the sale of ʿArāyā — that is, dried dates for fresh dates[694]*."*

The key distinction lies in **the method of valuation**:

- **Dry dates on the ground** are measured precisely (*kayl*, by weight or volume)
- **Fresh dates on the tree** are estimated (*kharṣ*, visual estimation)

[693] Majmu' Fatawa Ibn Taymiyyah: Vol. 20, p. 302.
[694] Sahih Sunan Abi Dawud: Grade: Sahih, (Albani): Vol. 2, p. 342. Hadith: 3362.

Hadith evidence

Sahl ibn Abī Ḥathmah said: *"The Messenger of Allah (peace be upon him) forbade the sale of fruit for dry dates but permitted ʿArāyā — the sale of dry dates for fresh dates on palm trees — based on estimation, so that the owners may eat them fresh*[695]*."*

This illustrates that **estimation (kharṣ)** is essential in validating ʿArāyā, whereas **precise measurement (kayl)** applies when both types of dates are already on the ground.

If both items are measured (i.e., both on the ground), the transaction falls under the prohibition due to disparity in quantity and resulting injustice.

Ibn ʿUmar said:
"The Prophet (peace be upon him) forbade the sale of fruit for dates by measure (kayl), the sale of grapes for raisins by measure, and the sale of crops for wheat by measure[696]*."*

The Ruling Is Based on Preservation of Value and Form

The Prophet (peace be upon him) clarified the reason for the prohibition when Saʿd ibn Abī Waqqāṣ asked about exchanging fresh dates for dry ones. He said:

"Do fresh dates decrease when they dry?" They replied, "Yes." So, the Prophet (peace be upon him) said: *"Then do not do that*[697]*."*

This applies **only when both are already harvested and measurable**, not when one of them is still growing and subject to estimation, as reported by Sahl ibn Abī Ḥathmah: *"The Messenger of Allah (peace be upon him) permitted the ʿArāyā — the sale of dry dates for fresh dates on palm trees — based on estimation*[698]*."*

[695] Sahih Sunan Abi Dawud: Grade: Sahih, (Albani): Vol. 2, p. 343. Hadith: 3363.
[696] Sahih Sunan Abi Dawud: Grade: Sahih, (Albani): Vol. 2, p. 342, Hadith: 3361.
[697] Sahih Sunan Abi Dawud: Grade: Sahih, (Albani): Vol. 2, pp. 341-342, Hadith: 3359.
[698] Sahih Sunan Abi Dawud: Grade: Sahih, (Albani): Vol. 2, p. 343. Hadith: 3363.

Shaykh Ibn ʿUthaymīn explained:
"ʿArāyā transaction is permissible when the fresh dates are on the tops of the palm trees. However, if the owner cuts and collects them in containers and offers them for sale, and someone says, 'I do not have any dirhams, but I have dry dates — estimate the container and I'll give you its equivalent in dry dates,' then this is not permissible[699]*."*

The reason is clear: once the dates are harvested and placed in containers, the transaction no longer involves *kharṣ* (estimation), but *kayl* (measurement), and becomes subject to the standard rules of Riba.

ʿArāyā Is Consistent with Sound Analogy

It becomes evident, therefore, that ʿArāyā is **not a contradiction to analogy** (contrary to the claim of some jurists[700]), but a **different category of transaction** altogether — based on estimation, not measurement; and a different economic function.

Ibn Taymiyyah reiterated: *"Nothing has been legislated that contradicts sound analogy*[701]*."*

Riba Is Injustice, and the Prophet Would Not Permit It

Allah says:
"But if you repent, you shall have your capital sums. Deal not unjustly, and you shall not be dealt with unjustly." (Al-Baqarah 2:279)

If ʿArāyā were truly a form of Riba, the Prophet (peace be upon him) would never have permitted it — even in cases of need — because **Riba is inherently unjust**, regardless of people's needs or preferences.

Ibn Taymiyyah observed:

---

[699] Al-Sharh Al-Mumti' by Ibn ʿUthaymīn: Vol. 8, p. 419.
[700] Awjaz Al-Masalik ila Muwatta Malik states: "Ayadh said, ʿArāyā is an exception to four prohibited principles: Muzabanah, Riba Al-Fadl, Nasa'a (delay), and the return in a gift." Vol. 12, p. 427.
[701] Majmu' Fatawa Ibn Taymiyyah: Vol. 20, p. 302.

"Usury is, primarily, used by those in need. The wealthy would not trade one thousand for one thousand and two hundred deferred unless the buyer was in need. Thus, the increase becomes an injustice to the needy[702]*."*

Conclusion:
ʿArāyā is **not an exception to the prohibition of Riba**, but a **sound and legitimate transaction** within the framework of Islamic law. Had it been Riba, the Prophet (peace be upon him) would have prohibited it, just as he forbade unequal exchanges of dry dates, despite people's needs. When he said, *"Beware! This is definitely Riba! Do not do that*[703]*"* he reaffirmed the principle that **need does not justify injustice**. Therefore, the permissibility of ʿArāyā reflects **sound reasoning, not exception**, and falls outside the scope of prohibited Riba.

A summary table comparing:

Case	Fresh dates	Dry dates	Method	Ruling
Both on ground	Ground	Ground	Kayl	Not allowed
One on tree	Tree	Ground	Khars	Allowed

Subtopic 2: Selling Fruits on the Tree

After discussing the issue of exchanging fresh dates for dry dates, we now turn to the permissibility of **selling fruits on the tree after they have ripened**, which is a valid and accepted option in Sharīʿa.

Ibn ʿUmar said:
"The Messenger of Allah (peace be upon him) forbade the sale of fruits until their ripeness is evident. He forbade both the seller and the buyer[704]*."*

[702] Majmu' Fatawa Ibn Taymiyyah: Vol. 29, p. 24.
[703] Sahih al-Bukhari: Hadith: 2312.
[704] Sahih al-Bukhari: Hadith: 2194.

This indicates that **once the fruits have ripened, selling them becomes permissible**, falling under the general principle stated by Allah Almighty: *"Allah has permitted sale" (Al-Baqarah 2:275).*

1. Fruits Treated as Benefits (Manfaʿah)

As previously mentioned, some jurists consider the sale of fruits to be an **exception to the prohibition of selling tangible assets (ʿayān) on credit**, due to the gradual nature of harvesting[705]. Others, however, regard such fruits as governed by the **rules of benefits and usufruct (manāfiʿ)**.

Several jurists, such as **Ibn Taymiyyah**[706], **Badr al-Dīn al-ʿAynī**, **Ibn ʿUthaymīn,** and others supported the latter view. Badr al-Dīn stated:

"The assets that gradually generate income while their original form remains are considered benefits[707]*."*

Shaykh Ibn ʿUthaymīn supported this reasoning, saying:
"The correct view that appears is what Shaykh al-Islām chose when he said: 'The income that is generated continuously, one after the other, is exactly like benefits and usufruct[708]*.'"*

2. Irrigation Is the Seller's Responsibility

If the fruit is sold on the tree after it has ripened, **the seller remains responsible for watering and basic care**, just as the lessor must maintain the leased property to keep it usable.

Al-Khaṭīb al-Shirbīnī said:
"Whoever sells a fruit or crop that has begun to ripen and keeps it, he must water it if it is something that can be watered, to the extent that it will grow and be safe from damage and spoilage[709]*."*

---

[705] Bidayat al-Mujtahid by Ibn Rushd: Vol. 2, p. 151.
[706] Majmu' Fatawa Ibn Taymiyyah: Vol. 20, p. 550.
[707] Al-Binaya (Sharh al-Hidayah) by Abu Muhammad Mahmud bin Ahmad Al-Ayni: Vol. 10, p. 289.
[708] Al-Sharh Al-Mumti' by Ibn 'Uthaymeen: Vol. 10, p. 32.

Similarly, Aḥmad al-Ḥijjāwī stated:
"The buyer has the right to keep it until the harvest and pruning, and the seller is obligated to water it if necessary[710]*."*

This supports the view that **fruits on the tree are treated like benefits**, and just as the lessor must maintain the leased item, the seller must preserve the sold fruit.

3. The Seller Guarantees the Sold Fruit

If the fruits are damaged due to a natural disaster before the buyer takes possession, **the seller bears the loss.**

Ibn Qudāmah said:
"Since the fruits are taken gradually, it is the responsibility of the seller if they are destroyed by a disaster, just like the usufruct in a lease contract[711]*."*

In other words, if a man purchases fruit still on the tree, pays for it, and then the fruit is destroyed before collection, **the seller must refund the price**. This is based on the following hadith:

"If you sell fruit to your brother, and a disaster strikes it, it is not permissible for you to take anything from it. How can you take your brother's wealth unlawfully[712]*?"*

Another narration states:
"The Prophet (peace be upon him) ordered 'wadhʿ al-jawāʾiḥ' (removing the burden of damage caused by disasters)[713]*."*

Shaykh ʿAṭiyyah Muḥammad Sālim explained:
"Wadhʿ al-jawāʾiḥ means evaluating the damage. A plague may destroy all the fruit or part of it. If all is destroyed, there is no disagreement that the

[709] Mughni al-Muhtaj (Sharh al-Minhaj) by al-Khatib al-Shirbini: Vol. 2, p. 119.
[710] Zaad Al-Mustaqni' (fi Ikhtisar Al-Muqni') by Ahmad Al-Hijjawi: p. 111.
[711] Al-Kafi by Ibn Qudamah al-Maqdisi: Vol. 2, p. 45.
[712] Sahih Muslim: Hadith: 3975.
[713] Sahih Muslim: Hadith: 3980.

seller bears the loss. The basic principle is that the guarantee of the sold item rests with the seller until the buyer takes possession of it[714]*."*

This shows that this transaction **follows the same principle as a lease**: the lessor is not entitled to the rent amount unless the lessee receives the benefit. Likewise, the seller is not entitled to the price unless the buyer takes possession of the fruit in usable form.

4. The Buyer May Sell or Dispose of the Fruit

Once the buyer purchases the fruit, **he is free to dispose of it**, including reselling it, **even while it is still on the tree**. However, if the fruit is later destroyed due to natural causes, **the original seller** is responsible, as **the fruit remains under his care until collected**.

Shaykh Ibn ʿUthaymīn explains:
"If someone buys fruit on the tops of palm trees and then sells it, it is permissible, even though the fruit remains under the seller's ***guarantee****. This illustrates that an item may be under the seller's responsibility, yet the buyer is permitted to dispose of it — such as through sale — as in the case of fruit on palm trees*[715]*."*

Summary

- ***Selling ripe fruits on the tree is permissible*** *according to authentic hadith.*
- *This transaction, in certain respects, is governed by the* ***rules of usufruct (manfaʿah) as affirmed by several jurists.***
- *The* ***seller remains responsible*** *for irrigation and care until harvest, much like a lessor maintains leased property.*
- *If the fruit is destroyed* ***before the buyer takes possession****, the seller bears the loss.*

[714] Sharh Bulugh al-Maram by Sheikh Attia Muhammad Salim: Hadith: Wad' al-Jawa'ih.
[715] Al-Sharh Al-Mumti' by Ibn 'Uthaymeen: Vol. 8, p. 380.

- *Once purchased, the **buyer may resell or dispose** of the fruit, even though it remains under the seller's guarantee.*

Subtopic 3: Fruits on Trees: Zakāt and Theft

We have previously explained that there are distinctions between **Māl** (property/wealth) and **Manāfiʿ** (benefits) in various rulings, including those related to **zakāt** and **theft**. This is because **zakāt is due on Māl** (property or money), not on benefits. Likewise, the ruling on **stealing benefits** differs from that of stealing **Māl**; whoever steals benefits is subject to **taʿzīr** (discretionary punishment), whereas one who steals tangible property may be subject to **ḥadd al-sāriqah** (theft penalty).

We also noted some distinctions between dry dates on the ground and **fruits on the tree**, which resemble **benefits** in several respects. Their similarity extends, beyond what has already been mentioned, to the **rulings on zakāt and theft**.

1. Zakāt on Fruits on the Tree

Just as zakāt is not due on benefits, **it is not due on fruits while they remain on the tree**. Zakāt becomes obligatory only **at the time of harvest**, as Allah Almighty says:

"And give its due on the day of its harvest." (Al-Anʿām: 141) Ibn ʿAbbās explained: *"It means the obligatory zakāt*[716]*."*

This means that **fruits on the tree are not subject to zakāt** while still growing, and are thus aligned with the ruling on **benefits**. The obligation arises **only upon harvest**.

Furthermore, if the fruits are **estimated (kharṣ)** before harvesting and are then destroyed by a natural disaster, **no zakāt is due** — because the obligation is tied to actual collection, not estimation.

[716] Tafsir ibn Kathir: Surah al-Anʿam: 141.

Ibn Qudāmah stated:
"The scholars agreed that if the estimator estimates the fruit on the trees before harvest, and then it is struck by a disaster, nothing is due from him[717]*."*

Imām Mālik said:
"The unanimously agreed-upon matter among us is that the date palms are estimated while the fruit is still on the tree, once ripe and ready for sale. However, zakāt is paid when the dates are harvested, in the form of dry dates. If a disaster strikes the fruit after it has been estimated and before it is pruned, and the disaster affects all of it, then no zakāt is due. But if any of the fruit remains amounting to five wasqs or more, then zakāt is taken on that, and not on what was destroyed[718]*."*

2. Theft of Fruits on the Tree

Regarding **theft**, it has been authentically reported that **there is no Hadd al-Sariqah (theft penalty)** for stealing fruits that are still attached to trees.

Sharīʿa Evidence

Rāfiʿ ibn Khadīj said:
"I heard the Messenger of Allah (peace be upon him) say: 'The hand is not cut off for fruit or palm pith[719]*.'"*

Juristic Commentary

According to *Al-Mawsūʿah al-Fiqhiyyah*:
"The majority of jurists — including the Hanafis, Shafiʿis, Hanbalis, and one of the two opinions within the Mālikī school — hold that the hand is not cut off for stealing fruit hanging from trees, based on the Prophet's statement: 'The hand is not cut off for fruit or palm pith[720]*.'"*

[717] Mughni Ibn Qudamah: Vol. 4, p. 170.
[718] Al-Muwatta' by Imam Malik: Vol. 2, p. 382.
[719] Sahih Sunan Al-Nasa'i: Grade: Sahih (Albani): Vol. 3, p. 233.
[720] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 15, p. 23.

ʿAbd al-Raḥmān al-Jazīrī wrote:
"The Shafiʿis and Hanafis said: There is no amputation for eating fruit from the tree or unharvested crops, due to their lack of secure preservation, and because the Prophet (peace be upon him) said: 'There is no cutting off for fruit or palm pith[721]*.'"*

Theft After Harvest
However, **if the fruit is stolen after it has been harvested and stored**, the ruling changes. The amputation penalty **may be applied**, provided the value meets the legal threshold.

ʿAbd Allāh ibn ʿAmr narrated:
"The Messenger of Allah (peace be upon him) was asked about hanging fruit. He said: 'Whatever someone in need steals, without having taken it as a storehouse (supply), is not liable for anything. But whoever takes any of it, he shall be fined twice its value and punished. Whoever steals any of it after it has been stored in the threshing floor, and it reaches the price of a shield, his hand shall be cut off. Whoever steals less than that shall be fined twice that amount and punished[722]*."*

This hadith **distinguishes between two scenarios**:

- If a person steals fruit **directly from the tree**, he is subject to **taʿzīr**.
- If he steals fruit that has been **harvested and secured**, and its value reaches the **niṣāb (legal minimum)**, then **ḥadd al-sariqah applies**.

The reasoning is that in the first case, the fruit is treated like a **benefit**, while in the second, it has become a **commodity** and therefore has its own distinct rulings.

Closing Remark
Islamic law is rooted in serving genuine human needs. Just as people require essentials like water and air, they also need lawful means to buy, sell, or rent.

[721] Al-Fiqh Ala Al-Madhahib Al-Arba'a – Al-Jaziri: Vol. 5, p. 156.
[722] Sahih Sunan Al-Nasa'i: Grade: (Hasan) Albani: Vol. 3, pp. 331-332.

ʿArāyā, therefore, is enabled by the Sharīʿa not as a mere concession, but as a valid transaction that harmonizes human need with divine justice — like any other legitimate contract.

Chapter Eight:
Zakāt on Debt

- **Section One: The Reality of Zakāt on Debt**
- **Section Two: Current Accounts**

Section One:
The Reality of Zakāt on Debt

Zakāt, besides being an obligation, carries a purpose that extends beyond mere compliance. It is a mechanism of economic vitality and social cohesion, connecting the rich and the poor. The transfer of *māl* to the poor increases their purchasing power, which, in turn, promotes economic activity.

Allah Almighty said:

- *"And establish prayer and give zakāt." (Al-Baqarah: 43)*
- *"Take sadaqah (zakāt) from their Māl." (At-Tawbah: 103)*

Muʿadh ibn Jabal narrated that the Prophet (peace be upon him) said:
"Inform them that Allah has enjoined upon them sadaqah to be taken from their rich and given to their poor. If they obey you in this, then beware of [taking] their best wealth, and beware of the supplication of the oppressed, for there is no veil between it and Allah[723]*."*

These Sharīʿa texts encompass, in addition to the points above, a broader vision of social justice. They emphasize that zakāt should be collected with fairness and that no undue hardship should fall upon the zakāt-payer. The Prophet's hadith explicitly warns the zakāt collector against wronging the wealthy by taking the best of their property or more than what is due. Likewise, following this same principle, it is impermissible for a mufti (jurist) to wrong the wealthy by imposing upon them an obligation that exceeds the rightful amount of zakāt.

A Critical Issue

Among the critical issues in zakāt is the question: **Who is obligated to pay zakāt on debt — the debtor or the creditor?**

This juristic disagreement can undermine the zakāt obligation in practice. One mufti may issue a fatwa stating that the creditor is not required to pay zakāt,

[723] Sahih al-Bukhari: Hadith: 1395.

while another, in the same situation, may rule that it is not due from the debtor but from the creditor, resulting in the zakāt being neglected altogether. In some cases, large companies have fallen into this misconception, claiming that their liabilities exceed their zakatable assets.

This section examines the juristic discourse on "zakāt on debt" and provides examples to illustrate how zakāt obligations affect the debtor and the creditor. The discussion is organized into three key topics:

1. Opinions on Zakāt on Debt
2. Zakāt Due on the Māl in the Debtor's Possession
3. Consequences of Considering Zakāt Due on the Creditor

Topic 1: Opinions on Zakāt on Debt

Jurists have held different opinions regarding zakāt on debt. Before detailing their views, consider the following hypothetical example, which serves to illuminate the core issue at hand:

Example:
Suppose a person owns 50% of the zakatable funds on earth and has paid zakāt on them. He then sells all of his wealth **on credit** to a buyer who intends to trade with it. The rest of the community has no wealth reaching the nisāb threshold. Thus, **only this individual was liable to pay zakāt**, but now, having sold his entire wealth on credit, the question arises:

Who is obligated to pay zakāt on these assets — the creditor or the debtor?

This example enables a critical assessment of the various juristic opinions. We aim to identify the view that upholds justice: taking from the wealthy what is due, without oppression, and delivering to the poor what is rightfully theirs.

Injustice is strictly forbidden in Islam. In a hadith qudsi, Allah says: *"O My servants, I have forbidden injustice for Myself and made it forbidden among you, so do not wrong one another*[724]*."*

The Prophet (peace be upon him) said:

- *"Indeed, your blood, your property, and your honor are sacred to one another...*[725]*"*
- *"Indeed, Allah has given each person who has a right, his due right*[726]*."*

Now, the buyer — in this case, the debtor — is the one in possession of the goods and can dispose of them through sale, gift, lending, exchange, or mortgage. Therefore, he is the **true owner** of the assets. Al-Nawawi stated:

"If someone buys something on credit and takes possession of it, then he is permitted to sell it without any disagreement[727]*."*

Sharīʿa texts command that zakāt be taken from the owner's wealth — i.e., the one who holds and controls the wealth. Allah Almighty says, *"Take sadaqah (zakāt) from their Māl." (Tawbah: 103).* Yet jurists have differed regarding zakāt on debt.

Summary of Juristic Opinions

Jurists have expressed three main views regarding zakāt on debt:

1. Zakāt Is Obligatory on the Debtor (Preferred View)

This view maintains that the person in possession of and benefiting from the wealth — the debtor — is responsible for paying zakāt. He uses the wealth, engages in trade, and generates profit from it.

[724] Sahih Muslim: Hadith: 6572.
[725] Sahih al-Bukhari: Hadith: 67.
[726] Sahih Sunan Abi Da'ud: Grade: Hasan (Albani), Vol. 2, p. 207
[727] Al-Majmu' by Al-Nawawi: Vol. 9, p. 325.

2. Zakāt Is Obligatory on the Creditor

Some jurists, like Maimun ibn Mihran, stated that zakāt is due from the creditor, not the debtor[728].

However, the creditor no longer possesses the wealth; he only has debt documents, not tangible assets from which zakāt can be paid.

3. Zakāt Is Due from Both the Debtor and the Creditor

Mak-hul stated: *"The debtor pays zakāt because he eats from it, marries from it, and trades with it; and the creditor who lent it also pays zakāt. This is wealth upon which zakāt is due twice[729]."*

However, this view leads to the **creditor being burdened with zakāt on wealth he no longer possesses**, as ownership has already been transferred to the debtor.

Practical Effects of Each View

If the zakāt collector goes to the **debtor** (first view), he will find substantial, tangible assets upon which zakāt can be assessed and distributed to the poor.

On the other hand, if the collector goes to the **creditor** (second view), he may return empty-handed, because the creditor has no physical possession of the wealth — only receivables, as indicated by the verse: *"Put the debt in writing"* (Al-Baqarah: 282) — which may not be collectible for years.

Imagine the repayment term is ten years. This results in ten lean years for the poor, clearly contrary to the spirit and objectives of zakāt in Islamic law.

Under the **third opinion** — where both the debtor and the creditor are held liable — two collectors would be required. Yet again, only the one who approaches the debtor would return with zakāt money, while the one who goes to the creditor returns with nothing.

---

[728] Al-Amwal by Abu Ubaid: p. 431.

[729] See: Al-Amwal by Ibn Zanjawayh: p. 958. Al-Nawawi (al-Majmu': Vol. 5, p. 317), Ibn ʿUthaymīn (Majmu' Fatawa Mutaniwi'ah: Vol. 14, p. 45), and other jurists share this opinion.

To conclude, this discussion emphasizes the importance of identifying the **true owner** of wealth and ensuring that zakāt is paid by those who benefit from and control the assets. The view that zakāt is due from the debtor aligns best with the principles of justice, effective wealth redistribution, and the **maqāṣid** (objectives) of Sharīʿa.

Topic 2: Zakāt Obligatory on the Debtor

As in the previous example, the creditor here does not possess the Māl (wealth); rather, ownership has passed to the buyer (debtor). The Māl is considered to be *growing* for the debtor, as he is the one benefiting from it.

According to this principle, many scholars — classical and contemporary alike — affirmed that zakāt on debt is the debtor's, not the creditor's, responsibility.

1- Early Juristic Statements

Among the early jurists who supported this view are as follows:
Ibrāhīm al-Nakhaʿī said: *"Zakāt is due from the one who eats from it comfortably*[730]*."* In other words, zakāt is due from the debtor who possesses and benefits from the Māl, as he is the one who disposes of it, grows it, and profits from it.

Abū ʿUbayd al-Qāsim explained:
"Zakāt on debt is obligatory on the debtor, and waived from the creditor[731]*."*

Ibn Abī Laylā, the Tābiʿī, similarly said:
"Zakāt on debt is due from the one who owes it[732]*."*

Ibn Ḥazm stated:
"Whoever owes a debt and possesses zakatable Māl is obligated to pay zakāt on it, whether it exceeds, equals, or is less than the debt owed, and whether it

[730] Al-Amwal by Abu Ubaid: p. 437.
[731] Al-Amwal by Abu Ubaid: p. 435.
[732] Al-Umm by Imam al Shafi'i: Vol. 8, p. 332.

is of the same type or not. This is also the view of al-Shāfiʿī, Abū Sulaymān, and others[733]*."*

He further added:
"There is no text in the Qur'an, authentic Sunnah, weak Sunnah, or scholarly consensus exempting from zakāt the wealth in a debtor's possession. The authentic Sunnah obligates zakāt on livestock, grain, dates, gold, and silver without differentiating between those in debt and those free of debt[734]*."*

On the creditor's side, Ibn Ḥazm held:
"Zakāt is not obligatory on the creditor for the debt owed to him, whether it is immediate or deferred, whether the debtor is solvent or insolvent, whether he acknowledges it or denies it. Even if the debt is collected years later, the creditor begins a new zakāt year, as with other types of wealth[735]*."*

He added: *"If someone borrows money and then lends it to another, zakāt is payable by the final debtor in possession of the Māl, as ownership has passed to him*[736]*."*

2- Contemporary Scholars

Among the contemporary scholars who have supported this view are **Shaykh ʿĀdil Yūsuf al-ʿAzzāzī**, **Shaykh Aḥmad Ḥamad al-Khalīlī**, and **Shaykh Zakariyyā al-Barrī**.

Shaykh ʿĀdil al-ʿAzzāzī stated regarding the creditor:
"Zakāt is not obligatory on the creditor, whether the debtor acknowledges the debt and can repay it, or whether he is insolvent or delays payment[737]*."*

Regarding the debtor, he said:

[733] Al-Muhalla by Ibn Hazm: Vol. 4, p. 219.
[734] Al-Muhalla by Ibn Hazm: Vol. 4, p. 220.
[735] Al-Muhalla by Ibn Hazm: Vol. 4, p. 221.
[736] Al-Muhalla by Ibn Hazm: Vol. 4, p. 219.
[737] Tamam al-Minnah fi al-Kitab by Sheikh Adel Yusuf Al-Azzazi: Vol. 2, p. 228.

"If a debtor possesses zakatable Māl, then he must pay zakāt on it. Debt does not waive zakāt on wealth in his possession once a year has passed over it. The debt remains his liability[738]."

Shaykh Aḥmad al-Khalīlī explained:
"The creditor cannot benefit from the loan before its due date; the benefit is for the debtor, so the zakāt obligation falls on him, not on the creditor[739]."

Shaykh Zakariyyā al-Barrī added:
"The debtor invests the loan for his account; he must pay zakāt. The creditor is not liable until he receives it, and a full year passes over it[740]."

3- Statement of ʿUthmān ibn ʿAffān (ra)

It is narrated from **ʿUthmān ibn ʿAffān** (ra) that he would say:
"This is the month of your zakāt. Whoever has a debt, let him pay it, then give zakāt on the remainder of his wealth[741]."

This instruction is directed at the debtor, since he is the one in possession of the Māl.

Ibn ʿUthaymīn commented:
"If a person pays his due debt, he is not liable for zakāt on it. But if he delays payment while benefiting from the money, zakāt becomes obligatory on it[742]."

Muḥammad al-Mukhtār al-Shanqīṭī emphasized:
"The basic rule is that zakāt is obligatory. Whoever has debt must either pay the debt or pay the zakāt. Otherwise, he commits injustice against the poor[743]."

Al-Rabīʿ ibn Sulaymān recorded al-Shāfiʿī's final view:

---

[738] Tamam al-Minnah fi al-Kitab by Sheikh Adel Yusuf Al-Azzazi: Vol. 2, p. 229.
[739] Majallat Majmaʿ al-Fiqh al-Islami: Issue No. 2, Vol. 1, p. 101.
[740] Majallat Majmaʿ al-Fiqh al-Islami: Issue No. 2, Vol. 1, p. 98.
[741] Al-Mughni by Muwaffaq al-Din Ibn Qudamah: Vol. 4, pp. 263-264.
[742] Al-Sharh Al-Mumti' by Ibn ʿUthaymīn: Vol. 6, p. 32.
[743] Sharh Zad al-Mustaqni' by Muhammad al-Mukhtar al-Shanqeeti: p. 1684.

"If a man has a thousand in his hand and owes a thousand, zakāt is still obligatory on him, for it is his property in all respects[744]."

4- Support from Jurists Who Take the Opposite Stance

The view that zakāt is obligatory on the debtor — without deducting debts — is reinforced by rulings found even within the schools of those who normally take the opposite stance. In other words, when faced with specific cases, some jurists depart from their general position and rule in favor of the first opinion. Jurists, past and present, have supported this view, as reflected in the following evidence:

- **Zakāt on Debt: Whether Immediate or Deferred**

The Permanent Committee for Scholarly Research and Ifta stated: *"The correct opinion of the scholars is that debt does not prevent zakāt[745]."*
Dr. Saeed bin Ali bin Wahf Al-Qahtani wrote: *"The debtor must pay zakāt on all that has remained in his possession for a full year[746]."*

- **Zakāt on Deferred Debt**

Ibn Abi Musa al-Hanbali stated: *"A deferred debt does not prevent the obligation of zakāt[747]."*
The First Zakāt Conference[748] and the Twelfth Symposium on Contemporary Zakāt Issues (Cairo, 2002) resolved: *"If the debt is deferred, it does not prevent the obligation of zakāt[749]."*

- **Farmer in Debt**

Imām Abū Ḥanīfah said: *"Debt does not preclude zakāt on grains[750]."*

---

[744] Al-Umm - Imam al Shafi'i: Vol. 8, p. 332.
[745] Fatwas of the Permanent Committee for Scholarly Research and Ifta: Vol. 9, p. 189.
[746] Al-Zakat fi al-Islam by Dr. Saeed bin Ali bin Wahf Al-Qahtani: p. 55.
[747] Al-Sharh al-Kabir by Shams al-Din Abi al-Faraj Ibn Qudamah: Vol. 6. p. 340.
[748] Fatawa of the First Zakat Conference: 1984.
[749] Twelfth Symposium - Cairo: 2002.
[750] Bidāyat al-Mujtahid by Ibn Rushd: Vol. 1, p. 246.

- **Owner of Crops, Livestock, or Minerals**

Al-Jazīrī stated: *"The Mālikī school holds that debt does not cancel zakāt on crops, livestock, or minerals[751]."*

As reported in Awjaz al-Masālik[752] and Bidāyat al-Mujtahid[753]: *"Mālik maintains that the debtor is obligated to pay zakāt on the ʿayn (gold or silver) if he possesses goods — even books — that can cover the debt owed by him."*

- **Livestock Owners in Debt**

Ibn Qudāmah stated: *"When the zakāt collector finds camels, cattle, or sheep, he does not ask the owner whether he owes a debt[754]."*

Ibn Abd al-Barr said, *"Debt does not cancel the zakāt on livestock[755]."*

Observation:

Such rulings show that these jurists, in certain contexts, already apply the core principle of the first opinion — that zakāt is a *ḥaqq maʿlūm* (a known, fixed due) attached to the wealth itself — even if they do not state it as a general rule.

The Bottom Line:

From the discussion above, it is clear that the debtor remains obligated to pay the zakāt due on his assets.

Note:

This ruling reflects a broader principle even in modern taxation: the person who possesses and benefits from wealth must bear the obligation, and systems must be designed fairly and efficiently.

---

751 Al-Fiqh Ala Al-Madhāhib Al-Arba'a by Al-Jaziri: Vol. 1, p. 538.
752 Awajz Al-Masālik ila Muwatta' Mālik: Vol. 5, p. 609.
753 Bidāyat al-Mujtahid by Ibn Rushd: Vol. 1, p. 246.
754 Al-Mughni by Ibn Qudamah: Vol. 4, p. 265.
755 Al-Kafi – Ibn 'Abd al-Barr: Vol. 1, p. 295.

Topic 3: Consequences of Considering Zakāt Due on the Creditor

Further clarification is warranted regarding the potential inequity that could arise if zakāt were imposed on a creditor for debts owed to him. The following discussion illustrates the implications of this view — *zakāt on the creditor*:

Maymūn ibn Mihrān said: *"When zakāt becomes due, look at how much cash or merchandise you have and evaluate it according to its value. If there is debt in a solvent account (accounts receivable), calculate it, then subtract from it what you owe (liability), then pay zakāt on what remains*[756]*."*
This statement contains two distinct directives addressed to the merchant: one in his capacity as a creditor and another in his capacity as a debtor.

- **As a creditor:** His words, "If there is debt in a solvent account, calculate it," indicate that he must include such receivables in his zakāt assessment — zakāt is therefore due on debts owed to him.
- **As a debtor:** His words, "Subtract what you owe," mean that debts owed to others are deducted from his assets; thus, he does not pay zakāt on what he owes.

Accordingly, Maymūn's statement indicates that **zakāt on debt is the obligation of the creditor**, not the debtor.

Ibn Qudāmah stated: *"If the debtor is a solvent person, then the creditor must pay zakāt on the debt when he collects it for the years that have passed*[757]*."*

This is also the position adopted by the **AAOIFI Shariʿa Standards**[758].

According to this view (that the creditor must pay zakāt on the debt), zakāt can, over time, consume the debt either partially or entirely. This becomes evident from the following examples:

[756] Al-Amwal by Abu Ubaid: p. 431.
[757] Umdat al-Fiqh by Ibn Qudamah: p. 38.
[758] AAOIFI Sharīʿa Standards. No. 35 (Zakat)

1. Zakāt: Consuming the Profit
Suppose a person purchased goods worth **100,000 dirhams** and sold them via *murābaḥa* for **125,000 dirhams**. The debtor pays **25,000** in installments, and the remaining **100,000** (the cost price) is paid in one lump sum after 10 years (*bullet payment*).

If the creditor must pay zakāt on this debt, the zakāt amount over ten years would be:

100,000 × 2.5% × 10 = 25,000 dirhams

That equals the entire net profit — zakāt has effectively consumed the gain.

Dr. ʻIṣām Khalaf al-ʻAnzī commented:
"Even though this person has made an annual profit… he will still be considered a loser, because zakāt will consume this profit[759]*."*

2. Zakāt: Eliminating the Entire Debt After Forty Years
If a person sells assets for **200,000 dirhams** on credit, with payment due after 40 years, the zakāt on that amount over the period would be:

200,000 × 2.5% × 40 = 200,000 dirhams

Thus, the entire debt is consumed.

3. Zakāt: Exceeding the Debt Amount
If the above debt is repaid after 80 years, the zakāt on it for the past years would be:

200,000 × 2.5% × 80 = 400,000 dirhams

That is double the original debt, clearly unjust to the creditor.

[759] Mu'alajat Zakat al-Duyun al-Sharikat by Issam Khalaf Al-Anzi: p. 13.

4. Zakāt: Consuming the *Mahr* (Dowry)

The *mahr* is a debt owed to the wife. If a dowry of **100,000 dirhams** is paid 50 years later, the zakāt due for past years would be:

100,000 × 2.5% × 50 = 125,000 dirhams

Here, the zakāt exceeds the dowry itself.

A deeper example: A man and his wife each possess one million dirhams, and he owes her a dowry of one million dirhams that remains unpaid for eighty years. Upon receiving the dowry, she would owe zakāt of two million dirhams for the past years — meaning that the entire two million now in her possession would have to be paid in zakāt.

1,000,000 × 2.5% × 80 = 2,000,000 dirhams.

She and her husband would be left in financial ruin.

Juristic Objections to This View

Several jurists have opposed this view. Ibn Taymiyyah remarked:

"The weakest of the opinions is the one that requires zakāt on debt for the past years, even if it cannot be collected. This opinion is invalid… The closest opinion is that nothing is required until a year has passed[760]*."*

Likewise, it is stated in Al-Fiqh al-Manhajī: *"If zakāt is due on inanimate wealth, it would be exhausted within approximately forty years — a scenario harmful to the owner*[761]*."*

Ibn al-Humām explained:

"The purpose of zakāt, besides being a test, is to help the poor in a way that does not make the payer poor — by giving from his surplus a little from a lot.

[760] Majmu' Fatawa Ibn Taymiyyah: Vol. 25, p. 48.

[761] Al-Fiqh Al-Manhaji 'ala al-Madhhab al-Shafi'i: Vol. 2, p. 21.

Obliging zakāt on non-productive wealth year after year has the opposite effect[762]*."*

For this reason, zakāt is not due on *qunyah* (fixed assets), since annual zakāt would eventually consume them. Al-Bājī noted:
"If zakāt were made obligatory on such assets, it would consume them; zakāt is only for wealth that can grow and is not usually destroyed by zakāt[763]*."*

To sum up, Zakāt is due on the debtor, not the creditor, because the debtor holds, benefits from, and grows the wealth. To require the creditor to pay zakāt for past years on uncollected debt leads to harm, injustice, and the very destruction of wealth, outcomes contrary to the purpose of zakāt.

Topic 4: Fixed Assets and Accounts Receivable

In continuation of our earlier discussion regarding zakāt on debts, it is essential to explore the rulings related to fixed assets and accounts receivable. Clarifying how these categories are treated is crucial for understanding zakāt calculation in contexts where zakatable and non-zakatable assets intersect.

A key point of connection between fixed assets and accounts receivable is that both have been viewed as non-zakatable by some early authorities, who grouped ʿurūḍ al-qunyah (fixed assets) and accounts receivable in their legal pronouncements. Ibn ʿUmar, ʿĀʾishah, and ʿIkrimah are reported to have said:

"There is no zakāt on debt (accounts receivable), because it is not growing; thus, zakāt is not due on it, just as it is not due on ʿurūḍ al-qunyah (fixed assets)[764]*."*

The following sections examine the zakāt treatment of each category in turn.

[762] Fath al-Qadir (Sharh al-Hidayah) by Ibn al-Humam: Vol. 2, p. 165.
[763] Al-Muntaqa Sharh Muwatta Malik: Vol. 3, p. 167.
[764] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 23, p. 238.

1. Fixed Assets

Fixed assets differ fundamentally from goods intended for sale. Zakāt is obligatory on trade goods, subject to the usual conditions, but not on fixed assets that are not for sale, such as residential buildings, rental properties, machinery, vehicles used for operations, or similar holdings.

This principle is grounded in the ḥadīth of Abū Hurayrah, in which the Prophet ﷺ said:
"A Muslim is not required to pay zakāt on his horse[765]*."*

Al-Nawawī commented that this ḥadīth forms the basis for the rule that zakāt is not due on *ʿurūḍ al-qunyah* (fixed assets)[766].

ʿAbd Allāh al-Bassām explains:
"Zakāt is based on equality and justice; Allah made it obligatory on the wealth of the affluent that is growing or prepared for growth, such as agricultural produce and trade merchandise. As for wealth that does not grow but remains for possession and use, there is no zakāt on it[767]*."*

(a) Property for Sale vs Property for Lease
Selling an asset is distinct from leasing it. If a car is acquired for resale, zakāt is due on it. If it is acquired for lease (e.g., as a taxi), zakāt is not due on it.

Shaykh Ibn Bāz stated:
"There is no zakāt on a private car for personal use or a taxi… Zakāt is only due on merchandise — such as a car — *prepared for sale*[768]*."*

Ibn ʿUthaymīn similarly remarked:
"There is no zakāt on a person's possessions — utensils, furniture, equipment, cars, real estate — even if rented out[769]*."*

[765] Sahih Muslim: Hadith: 2273.
[766] Sharh Sahih Muslim: Hadith: 2273.
[767] Taysir Al-Allam by Abdullah Al Bassam: Vol. 1, p. 467.
[768] Fatawa Noor Ala Al-Darb by Sheikh ibn Baz: Vol. 15, pp. 262-263.

(b) Zakāt on Income from Leased Assets

While the value of a leased asset itself is exempt from zakāt, its rental income is zakatable if it reaches the niṣāb and a lunar year has passed.

The Dubai Fatwa Department states:
"There is no zakāt on the leased asset, as it is a fixed asset and not held for sale; however, zakāt is due on its income if it reaches the minimum threshold and a year has passed[770]."

AAOIFI Sharīʿa Standards likewise affirm:
"Zakāt is not obligatory on fixed assets that generate income and are not intended for trade. Rather, it is obligatory on the portion of income remaining at the end of the year[771]."

(c) Practical Illustration

Consider a company holding 1,000,000 dirhams in cash and 2,000,000 dirhams in merchandise. It acquires a hotel valued at 3,000,000 dirhams (a fixed asset) through a murābaḥa agreement, thereby creating an equivalent liability.

- Zakāt is due on the 1,000,000 dirhams in cash and 2,000,000 dirhams in merchandise:
  3,000,000 × 2.5% = 75,000 dirhams
- The value of the fixed asset is excluded from the zakāt base.
- The liability of 3,000,000 dirhams is not deducted from the zakatable assets.

Some jurists have erred by deducting such liabilities from zakatable assets while exempting the fixed assets, resulting in zero zakāt — i.e., cash 1,000,000 dirhams + merchandise 2,000,000 dirhams - liabilities 3,000,000 dirhams. Others recognized this error but attempted to correct similar cases by

[769] See: Majmu' Fatawa wa Rasa'il ibn Uthaimeen: Vol. 18, p. 254.
[770] Fatawa Shariyyah – Da'irat al-Ifta' (Islamic Affairs and Charitable Activities Department in Dubai): Vol. 7, p. 30.
[771] AAOIFI Sharīʿa Standards: No. 35 (Zakah).

linking the debt to the fixed assets in hand, offsetting the two against each other and thereby leaving the zakatable assets unchanged (e.g., 75,000 dirhams). However, such linkage is unnecessary; the assessment should consider only the zakatable assets.

(d) Depreciation Provisions

Depreciation provisions record the gradual decline in the value of fixed assets, enabling financial statements to reflect the current value[772]. However, such provisions do not reduce zakatable assets, as they pertain to non-zakatable fixed assets.

Example:

A business begins with 1,000 dirhams, purchases merchandise for 1,000 dirhams, sells it for 2,000 dirhams, then acquires machinery for 600 dirhams, leaving 1,400 dirhams in cash. Zakāt is due on the 1,400 dirhams, not on the machinery.

If the machinery's useful life is two years, the annual depreciation is 300 dirhams. At year's end, the machinery's book value is 300 dirhams, but this has no impact on zakatable assets, which remain 1,400 dirhams in cash.

AAOIFI states:

"Provisions relating to fixed assets are non-deductible from zakāt assets, since fixed assets are not part of the zakāt base[773]."

2. Accounts Receivable

Accounts receivable arising from transactions such as murābaḥa, salam, istiṣnāʿ, qarḍ, or advance payments[774] are generally considered non-zakatable as the receivable is not accessible or "growing" in the zakāt sense. This view,

[772] Dalil al-Irshadat – Bayt al-Zakat al-Kuwait: p. 32.
[773] AAOIFI Sharīʿa Standards: No. 35 (Zakah).
[774] See: AAOIFI Sharīʿa Standards: No. 35 (Zakah)

held by Ibn ʿUmar, ʿĀʾisha, and ʿIkrimah, rests on their analogy to fixed assets[775].

Dr. Ṣalāḥ al-Ṣāwī notes that when a buyer pays for goods in advance without taking possession, zakāt on that payment is due on the seller, not the buyer[776].

Likewise, AAOIFI Sharīʿa Standards stated: *"As for cash payments received in advance under a written or verbal exchange contract, they are not deductible from zakatable assets[777]."*
The same principle applies in salam and istiṣnāʿ contracts: the recipient of the price holds zakatable funds, whereas the payer does not.

Ibn Qudāmah stated: *"Both the seller who receives a nisāb in advance and the muslam ilayh (recipient in a salam contract) are obliged to pay zakāt on the amounts they receive[778]."*

The Seventh Symposium on Contemporary Zakāt Issues resolved: *"Zakāt on the price of a salam is due from the muslam ilayh (recipient); zakāt on istiṣnāʿ is due from the muṣniʿ (manufacturer), where the amount is received in advance[779]."*

Doubtful Debts and Other Provisions

Since accounts receivable are not subject to zakāt, the same ruling applies to provisions for doubtful debts, which are treated analogously to fixed assets or depreciation provisions. More generally, provisions such as end-of-service benefits and similar liabilities are not deductible from a company's zakāt base.

This position has been affirmed by the International Islamic Fiqh Academy, which stated: "The end-of-service benefit, retirement bonus, and retirement salary in private institutions or companies, as well as the savings bonus, are

[775] Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: Vol. 23, p. 238.
[776] Min al-Tadbiqat al-Muʿasirah by Dr. Salah Al-Sawy: pp. 5-6
[777] AAOIFI Sharīʿa Standards: No. 35 (Zakah)
[778] Muqni Ibn Quddamah: Vol. 4, p. 271.
[779] Seventh Symposium on Contemporary Zakat Issues in Kuwait: 1997.

not to be deducted from zakatable assets[780]." The AAOIFI Sharīʿa Standards have adopted the same principle[781].

From the employee's perspective, end-of-service benefits are not subject to zakāt as long as they are in the employer's possession. Both the UAE Fatwa Council[782] and the Saudi Permanent Committee for Ifta[783] have clarified that the employee is not obligated to pay zakāt on such benefits for the years that have passed.

Conclusion:

Uncollected debts lack certain attributes — such as *namāʾ* — similar to ʿurūḍ al-qunyah, and thus do not form part of the zakatable base until collected. Once collected, they are no longer considered debts but assume the status and ruling of other assets, such as "cash" if received in cash. Similarly, if a company's zakatable assets (e.g., cash in hand) represent liabilities — such as end-of-service benefits — zakāt is assessed on the assets themselves, not on their designation as liabilities.

[780] International Islamic Fiqh Academy: 2005, Resolution: 143.
[781] AAOIFI Sharīʿa Standards: No. 35 (Zakah)
[782] The General Authority of Islamic Affairs and Endowments in UAE: No. 10399.
[783] Fatawa al-Lajnah al-Da'imah Lilbuhuth al-Ilmiyyah: Fatwa No. (7472), Vol. 9, p. 283.

Section Two:
Current Accounts

The juristic inquiry into whether current accounts constitute loans raises a related question: *Who should bear the obligation of paying zakāt on these funds?* This inevitably links the discussion of current accounts to the broader jurisprudential treatment of zakāt on debts. In what follows, we shall examine:

1. Opinions on the classification of current accounts.
2. The reality of current accounts (illustrative models).
3. Zakāt rulings pertaining to current accounts.

Topic 1: Opinions on Current Accounts

Contemporary jurists and researchers differ on the proper classification of current accounts within Islamic jurisprudence: Are they to be regarded as a *deposit* (wadīʿah), a *loan* (qarḍ), or a distinct contractual arrangement?

First Opinion
Several scholars hold that current accounts represent a modern contractual form, not subsumable under any single classical contract.

Dr. Muḥammad ʿAlī al-Qarī states:
"The current account is a modern transaction whose ruling reverts to the general principle in transactions, namely, permissibility and lawfulness[784]*."*

Second Opinion
Some scholars classify the current account as a real deposit (*wadīʿah*).

Dr. Ḥassan al-Amīn writes:
"A cash deposit on demand is an amount placed in the bank, to be withdrawn at the time chosen by the depositor; this fulfils the requirements of a real deposit[785]*."*

[784] Al-Takyeef al-Sharʿi li al-Hisab al-Jari by Dr. Muhammad Ali Al-Qari: p. 29.
[785] Al-Wada'iʿ al-Masrifiyyah al-Naqdiyah by Dr. Hassan Al-Amin: p. 261.

This group believes that the depositor's intent is to preserve funds, not to lend to the bank.

Third Opinion

A third group maintains that current accounts are, in essence, loans. The International Islamic Fiqh Academy resolved:

"Demand deposits (current accounts), whether with Islamic banks or interest-based banks, are loans from a jurisprudential perspective, as the bank that receives these deposits acts as a guarantor for them and is legally obligated to return them upon request. The fact that the bank is solvent does not change its legal status as a borrower[786]."

This interpretation entails that any benefits or rewards granted by Islamic banks to current account holders would constitute impermissible interest on the loan.

A critic of the ***Qard* (loan)** classification has argued:
A loan is an act of kindness from the lender to the borrower. How can current accounts be deemed loans when the depositor does not intend benevolence toward the bank?

Conversely, an opponent of the ***Wadiʿah* (deposit)** classification has contended:
A deposit is, by nature, an act of benevolence. How, then, can current accounts be regarded as deposits when the bank harbors no intention of benevolence toward the depositor? As Imām al-Nawawī stated: "All the imams agreed that a deposit is a recommended act of worship, that safeguarding it is rewarded, and that accepting it is a pure trust[787]."

In truth, the presence of reward is not limited to benevolent loans or deposits. Whether one is a lender, depositor, seller, or tenant, lawful transactions —

[786] International Islamic Fiqh Academy: Resolution No. 86.
[787] Al-Majmu' by Imam al-Nawawi: Vol. 15 p. 6.

regardless of intent toward the counterparty — remain meritorious in the sight of Allah[788].

A Nuanced Position

Some contemporary scholars maintain that current accounts cannot be reduced to a single classical category. Dr. Yūsuf al-Shubaylī observes:

"The current deposit contract is a novel arrangement. It resembles a loan in several respects and a guaranteed deposit in others, yet it is neither a pure loan in all its aspects nor a guaranteed deposit in every sense[789]."

Topic 2: Reality of Current Accounts

The practical reality of current accounts shows that they are neither purely *wadiʿah* (deposit) nor purely *qarḍ* (loan), but rather constitute an independent contractual arrangement. The following examples demonstrate that the amounts recorded in a current account are sometimes placed there by parties other than the account holder, which removes the basis for classifying them as either a loan from or a deposit by the account holder.

1. When the amounts in a current account are not a loan

In the cases below, the funds in a current account cannot be considered loans from the account holder to the bank, because the account holder did not initiate the transfer; rather, another party deposited the funds.

(a) Salary transfer from an employer

Some individuals open current accounts solely because their employer requires salary payments to be transferred through a bank. In such cases, the account holder's intention is not to lend money to the bank, but merely to comply with company regulations. The account serves only as a channel for receiving wages. Suppose the bank itself deposits the salaries into the employees' current accounts — in that case, the funds cannot be regarded as a loan from the account holders (employees) to the bank.

[788] See: Sharh al-Arba'in al-Nawawiyah by Sheikh Abdul Karim Al-Khudair: Hadith: 2329.
[789] Al-Takyeef al-Shar'i li al-Hisab al-Jari by Dr. Yūsuf al-Shubaylī: p. 66.

(b) Shareholders' or investors' profits

If the bank credits shareholders' dividends or investment account profits directly into their current accounts, this is not a loan from the account holder to the bank. Here, the bank itself initiated the transaction.

(c) Debt settlement by a third party

If a debtor deposits funds directly into the creditor's (account holder's) current account, the account holder cannot be regarded as having lent this amount to the bank, since the transfer was initiated by the debtor.

(d) Collection of commercial paper

When a bank collects the value of a commercial paper — such as a cheque — on behalf of the customer and credits the amount into the customer's current account, the transaction does not constitute a loan from the account holder.

(e) Earnest money in the current account

If earnest money is reserved in a current account to guarantee repayment of instalments, it is not a loan from the account holder. As per AAOIFI Sharīʿa Standards:

"The earnest money provided as a guarantee may either be a trust for safekeeping with the institution, in which case it is not permissible for the institution to use it, or it may be an investment trust, whereby the customer authorizes the institution to invest it based on Sharīʿa-compliant Muḍāraba between the customer and the institution[790]*."*

2. When the amounts in a current account are not a deposit (*wadiʿah*)

On the other hand, these funds cannot be classified as *wadiʿah*, because the account holder did not hand over the money to the bank; rather, another party deposited it:

- **Employer salary transfers** — Whether the employer is the bank itself or another entity, these transfers are not deposits by the account holder.

[790] AAOIFI Sharīʿa standards: No. 8 (Murābaḥa)

- **Investment profit distributions** — Profits transferred by the bank into an investor's current account are not deposits from the account holder.
- **Proceeds from a *Salam* contract** — If the bank acts as the **rabb al-salam** under a Salam contract and deposits the amount into the current account, this is not a deposit from the account holder but financing provided by the bank.

The above examples highlight that current account funds often originate from parties other than the account holder. In such cases, neither the classification of *wadiʿah* (deposit) nor *qarḍ* (loan) is accurate.

As Dr. Sami Al-Suwailem notes:
"The amounts that are placed into a current account are sometimes made by the customer and at other times by the bank. Therefore, the legal classification must be based on amounts from both sides[791]*."*

The Bottom Line:
Current accounts cannot be precisely classified as either wadiʿah (deposit) or qarḍ (loan). Their practical reality reflects a hybrid nature, warranting treatment as an independent contractual arrangement with its own provisions — such as those relating to zakāt and guarantees — rather than being forced into the framework of a different contract.

Topic 3: Zakāt on Current Accounts

In continuation of our previous discussion on zakāt on debts, it is established in fiqh that the debtor who controls the *māl* is liable for its zakāt. This is because the creditor cannot access the debt, not even to transfer it before maturity. For example, if a lender advances 1,000 dirhams to a borrower for a fixed term of three years, the lender cannot dispose of this amount during that period; thus, the zakāt obligation rests with the borrower.

However, the funds in a current account differ: the account holder retains continuous access to the money deposited with the bank and may withdraw

[791] Al-Takyeef al-Sharʿi li al-Hisab al-Jari by Dr. Sami Al-Suwailem: p. 78.

any portion at any time. Even if part of the balance is withdrawn (e.g., 500 dirhams out of 1,000), the remaining portion remains under the bank's use while being fully payable to the account holder on demand.

This difference raises a key question: **Who bears the zakāt obligation on the funds in a current account — the bank or the account holder?**

Importantly, Ibrāhīm al-Nakhaʿī offers a guiding principle:
"Zakāt is due from the one who eats from it comfortably[792]*."*

Thus, the determination hinges on identifying which party *benefits* from the funds — the bank, the account holder, or both.

1. Mutual Benefit in Current Accounts

Current accounts have a distinctive characteristic: they benefit both the bank and the depositor, each in their respective capacity.

1.1 Benefit to the Depositor

Holders of current accounts retain full transactional authority over their balances. They can withdraw cash via debit cards or checks, or transfer funds to third parties.

Debit Card Usage: Fathi Shawkat explained that the term "debit card" refers to the fact that the price of goods and services is deducted directly from the customer's balance[793]. Abdul Rahman al-Hijji notes that the debit card enables purchases and cash withdrawals directly from the account balance, eliminating the need for credit facilities[794]. This is consistent with the AAOIFI Sharīʿa Standards (No. 2), which state that debit card transactions deduct amounts immediately from the available balance. ʿAbdul Wahhāb Abū Sulaymān confirms that debit cards are not credit cards; thus, fiqh rulings on loans do not apply[795].

[792] Al-Amwal by Abu Ubaid: p. 437.
[793] Bidaqat al-I'itman al-Bankyah by Fathi Shawkat: p. 20.
[794] Al-Bidaqat al-Masrifiyah by Abdulrahman al-Hijji: p. 57.
[795] Majallat Majmaʿ al-Fiqh al-Islami: Vol. 2, p. 783.

Check Usage: Banks issue checkbooks to current account holders, enabling them to withdraw at will — within the limits of their deposits[796]. The check serves as an instrument of claim against the bank, not as money itself, and payment occurs only when it is presented and honored.

Transfers and Currency Exchange: Current account holders may use the balance in their accounts to exchange currency or transfer funds. Dr. Ṣāliḥ bin Zābin al-Marzūqī affirms the permissibility of conducting such transactions directly from the account balance[797].

1.2 Benefit to the Bank

Although classified as "on-demand," current account deposits are rarely withdrawn in full simultaneously by all customers. This practical reality enables the bank to invest a portion of such deposits.

Dr. Yūsuf al-Shubaylī explains: "Banks analyze the stability of such deposits and invest the fixed portion while maintaining regulatory reserves, which may exceed 50% in some jurisdictions[798]."

Dr. Ahmad bin Hasan al-Hasani adds: "Banks employ these deposits in investment activities while safeguarding liquidity to preserve depositor confidence[799]."

2. The Nature of Funds in Current Accounts

The bank assumes full responsibility for safeguarding funds in current accounts, which it commingles with its own funds since monetary units are fungible. The principle of fungibility is affirmed in:

- The resolutions of the International Islamic Fiqh Academy[800],
- The opinions of Ibn ʿUthaymīn[801], and
- The writings of al-Sarakhsī[802].

---

[796] Al-Wada'i al-Masrifiyah by Dr. Ahmed bin Hassan Al-Hasani: p. 71.
[797] Majallat Majma' al-Fiqh al-Islami: Vol. 1, p. 258.
[798] Al-Khidmat al-istithmariyah fi al-Masarif by Dr. Yusuf Al-Shubaili: p. 564
[799] Al-Wada'i al-Masrifiyah by Dr. Ahmed bin Hassan Al-Hasani: p. 78.
[800] International Islamic Fiqh Academy: 2004, Resolution: 140.
[801] Al-Sharh Al-Mumti' by Ibn ʿUthaymīn: Vol. 8, p. 452.
[802] Al-Mabsut by Al-Sarakhsi: Vol. 14, pp. 13-14.

They emphasize that, in rescission of contracts involving mixed funds, the requirement is equivalence in amount rather than the physical return of identical units.

Since the bank mixes these funds with its own and disposes of them, they are considered guaranteed (secured) funds. Hamza bin Ḥusayn al-Sharīf clearly states that all bank deposits — except investment deposits in Islamic banks — are guaranteed[803].

This is analogous to the case of *luqaṭah* (lost property), where the finder uses the item but remains obliged to return it to its rightful owner upon claim, as established in the hadith concerning found gold or silver[804]. Notably, the Prophet ﷺ described such a case as a *wadiʿah* (deposit) rather than a *qarḍ* (loan), underscoring the legal distinction between the two.

3. Zakāt Calculation

Because current account balances benefit both the bank and the depositor, the zakāt calculation process must be based on the financial statements of both parties:

- **For the Depositor**:

As the account balance forms part of their *naqd* (cash) holdings, these funds are subject to zakāt once they meet the *niṣāb* and one lunar year has elapsed. Dr. ʿAbdullah bin ʿĪsā al-ʿAydī notes that, unlike a creditor, the depositor faces no delay or uncertainty in retrieving current account balances; therefore, he is obligated to pay zakāt once the conditions are met[805]. Sheikh Ibn Bāz affirms that zakāt is obligatory annually on such funds in banks that do not charge interest[806].

[803] Al-Takyeef al-Shar'i li al-Hisab al-Jari by Hamza bin Hussein Al-Sharif: p. 41.
[804] Sahih Muslim: Hadith: 4502.
[805] Zakat al-Duyun al-Mu'ahsirah by Dr. Abdullah bin Issa Al-Aydi: p. 118.
[806] Al-ikhtiyarat al-Fiqhiyyah min Fatawa Al-Sheikh Ibn Baz - Khalid bin Sa'ud: p. 438.

- **For the Bank**:

The bank does not retain all deposits; rather, it uses a large portion of them for financing activities. Monzer Kahf notes that these deposits serve as a low-cost source of funds for such operations[807]. Ahmad Hassan explains that banks typically maintain a reserve (e.g., 20%) and invest the remainder[808]. Therefore, the bank may not deduct any deposit balances — or the portion held as reserves — from its zakatable assets.

Practical Example:

If a bank holds total deposits of 100 million dirhams, retains 20 million as reserves, and invests the remaining 80 million, the zakāt collector will not deduct the 20 million in cash reserves from the zakatable funds. The same rule applies to the invested portion if it comprises zakatable assets such as merchandise. Excluding these balances from the zakāt base would yield inaccurate results. For example, suppose the bank's total zakatable assets (e.g., cash) amount to 20 million dirhams, and the bank claims that these represent deposit reserves; this is unacceptable.

Overall, while this approach may seem to lead to "double zakāt[809]" (once from the depositor and once from the bank), it is actually the proper method to prevent under-calculation or unjustified claims by zakāt payers, thereby safeguarding the rights of the poor.

[807] Asasiyat al-Tamweel al-Islami by Monzer Kahf: p. 152.
[808] Al-Awraq al-Naqdiyah by Ahmed Hassan: p. 128.
[809] This may recall Mak-hul's statement: "This is wealth upon which zakat is due twice." See: Al-Amwal by Ibn Zanjawayh: p. 958.

References

1. Al-Ijāra ala al-Ijāra by Abdulla Musa Al-Ammar: Imam Muhammad ibn Saud Islamic University, 1423 AH.
2. Ahkam al-Awraq al-Naqdiyah wa al-Tijariyah by Sitr Al-Juaid: 1405 - 1406 AH.
3. Ahkam Idni Al-Insan by Dr. Muhammad Abd al-Rahim Sultan al-Ulama: Dar Al-Bashir, 1st ed., 1996.
4. Ahkam al-Ta'amul fi al-Aswaq al-Maliyyah al-Muʿasirah by Mubarak bin Sulaiman: Kunuz Ishbiliya, Riyadh, 1425 AH.
5. Ahkam Al-Qur'an – Abu Bakar Al-Jassas: Dar Ihya' Al-Kutub Al-Arabiyya: 1992.
6. Ahkam al-Mu'amalat al-Sharīʿa by Sheikh Ali Al-Khafif: Dar al-Fikr al-Arabi - Cairo, 2008.
7. Ikhtilaf al-Aimmah al-Ulama - Ibn Hubaira: Dar Al-Kutub Al-Ilmiyyah, Beirut, 1st ed., 2002.
8. Al-ikhtiyarat al-Fiqhiyyah min Fatawa Al-Sheikh Ibn Baz - Khalid bin Sa'ud: Kunuz Ishbiliya, 2012.
9. Ikhtiyarat Sheikh al-Islam Ibn Taymiyyah – Dr. Mubarak al-Saif: Kunuz Ishbiliya, 2009.
10. Al-Adab Al-Mufrad – Al-Bukhari: Maktabat al-Dalil, 4th ed., 1997.
11. Irwa Al-Ghalil – Albani: Al-Maktab al-Islami, 1st ed., 1979.
12. Asasiyat al-Tamweel al-Islami by Monzer Kahf: Al-Manhal, 1st ed., 2013.
13. Ishtiqaq Asma' Allah by Abu al-Qasim al-Zajjaji: Mu'assasat al-Risalah, 1986.
14. Al-Ishraf by ibn Al-Mundhir: Maktabat Makkah al-Thaqafiya, 1st ed., 2005.
15. Usool Dabd al-Mu'amalat al-Maliyah by Dr. Walid bin Hadi: Markz al-Kitab, 1st ed., 2011.
16. Al-Iʿtisam by Al-Shatibi: Maktabat al-Tawheed, 2000.
17. Iʿlam al-Muwaqqi'in by Ibn al-Qayyim: Dar Ibn Al-Jawzi: 1st ed., 1423 AH.
18. Ighatht al-Lahfan by Ibn al-Qayyim: Dar Alam Al-Fawa'id, 1432 AH.
19. Al-Istidhkar by Ibn Abd al-Barr: Dar Qutaiba, Damascus, 1st ed., 1993.
20. Al-Ifham Sharh Umdat al-Ahkam by Ibn Baz: Dar Al-Fath, 1416 AH.
21. Al-Umm by Imam al-Shafi'i: Dar Al-Wafa', 1st ed., 2001.
22. Al-Amwal by Abu Ubaid: Dar Al-Kutub Al-Ilmiyyah, Beirut, 1st ed., 1986.

23. Al-Insaf by Al-Mardawi: Madba'at Al-Sunnah Al-Muhammadiyah, 1st ed., 1956.
24. Anwar al-Masalik (Sharh Umdat al-Salik in the Shafi'i School) by Muhammad al-Zuhri al-Ghamrawi: Dar Ihya' Al-Kutub Al-Arabiyya, 1959.
25. Awajz Al-Masalik ila Muwatta' Malik by al-Kandhlawi: Dar al-Qalam, 1st ed., 2003.
26. Al-Awraq al-Naqdiyah by Ahmed Hassan: Dar al-Fikr, 1999.
27. Al-Bahr Al-Ra'iq by Ibn Nujaym: Dar Al-Kutub Al-Ilmiyyah, 1st ed., 1997.
28. Bahr al-Madhhab (Fiqh al-Shafi'i) by al-Ruyani: Dar Al-Kutub Al-Ilmiyyah, 1st ed., 2009.
29. Buhuth Fiqhiyah fi Qadaya Iqtisadiah - Group of Authors: Dar Al-Nafa'is, 1st ed., 1998.
30. Buhuth fi Qadaya Fiqhiyah Muʿasirah by Muhammad Taqi Uthmani: Dar Al-Qalam, 2013.
31. Buhuth Nadwat Al-Barakah (Al-Baraka Symposium): 2011.
32. Buhuth Mukhtarah fi al-Tamweel al-islami: Shura Li Al-Istisharat, 2003.
33. Bidayat al-Mujtahid by Ibn Rushd: Dar Al-Ma'rifah, 6th ed., 1982.
34. Bada'iʿ al-Sanaiʿ - Al-Kasani: Dar Al-Kutub Al-Ilmiyyah, 2nd ed., 2003.
35. Bidaqat al-Itiman al-Bankiyah fi al-Fiqh al-Islami by Fathi Shawkat: Al-Najah National University - Jordan, 2007.
36. Bidaqat al-Itiman al-Masrifiyah min Manthur Islami – Dr. Saad Abd: Majalat Kuliat Baghdad, Issue Thirty-Four, 2013.
37. Bidaqat al-Itiman (Bahth) by Dr. Wahba al-Zuhaili: Muscat, Oman, 2004.
38. Al-Bidaqat al-Masrifiyah by Abdulrahman al-Hijji: Imam Muhammad ibn Saud Islamic University, 1420 AH.
39. Bidaqat al-Itiman Haqiqatuha wa Takyifuha by Dr. Ibrahim Muhammad Shasho – Majallat Jamiat al-dimishiq: Mujallad 27, Issue 3, 2011.
40. Al-Binaya (Sharh al-Hidayah) by Abu Muhammad Mahmud bin Ahmad Al-Ayni: Dar Al-Kutub Al-Ilmiyyah, 1st ed., 2000.
41. Bank al-Laribawi (Interest-Free Bank) by Muhammad Baqir: Dar al-Ta'aruf, Beitut, 7th ed., 1981.
42. Al-Bayan fi Madhhab Al-Imam Al-Shafi'i by Al-Imrani: Dar al-Minhaj, 1st ed., 2000.

43. Al-Bayan wa Al-Tahsil by Ibn Rushd: Dar al-Arab al-Islami, Beirut, 1st ed., 1984.
44. Al-Bai wa al-Shira (Bahth) by Dr. Muhammad Rateb Al-Nabulsi.
45. Bayʿ al Dayn fi Al-Sharīʿa - Dr. Wahba Al-Zuhayli: Dar al-Maktabi, 1st ed., 1997.
46. Bayʿ al Dayn wa Tadbiqatuh al-Muʿasirah by Usama Hamood: Dar al-Maiman, 1st ed., 2012.
47. Tadweer al-aʿmal al-Masriyah by Sami Hasan Hamūd: Madbaʿat al-Sharq, 2nd ed., 1982.
48. Al-Taʿliq ʿala Al-Kafi by Ibn ʿUthaymīn: Mu'assasat al-Sheikh, 1439 AH.
49. Tafsir Ayat Ushkilat by Ibn Taymiyyah: Sharikat al-Riyad, 1st ed., 1996.
50. Tafsir Al-Alusi: Mu'assasat al-Risalah, 1431 AH.
51. Tafsir ibn Kathir: Dar Taiba, 1999.
52. Tafsir Al-Shaʿrawy: Akhbar al-Yawm, 1991.
53. Tafsir Al-Tabari: Dar al-Hadith, 1431 AH.
54. Tafsir Al-Qurtubi: Mu'assat al-Risalah, 2006.
55. Al-Tafsir Al-Kabir by Fakhr al-Din al-Razi: Dar al-Fikr, 1981.
56. Tafsir Al-Kashaf by Al-Zamakhshari: Dar Al-Kutub Al-Ilmiyyah, 2015.
57. Tafsir Mahasin Al-Ta'wil by Muhammad Jamal: Isa al-Babi al-Halabi, 1957.
58. Al-Takyeef al-Sharʿi li al-Hisab al-Jari – Bank al-Jazira: Dar al-Maiman, 1st ed., 2019.
59. Tamam al-Minnah fi al-Kitab by Sheikh Adel Yusuf Al-Azzazi: Mu'assasat Qurtuba, 2009.
60. Al-Tamhid by Ibn Abd al-Barr: Dar Al-Kutub Al-Ilmiyyah, 2010.
61. Tanweer al-Absar wa Jami' al-Bihar fi al-Fiqh ala al-Madhhab al-Hanafi by Muhammad al-Tamar Tashi: Dar Al-Kutub Al-Ilmiyyah, 2017.
62. Tahdhib al-Athar by Al-Tabari: Madba'at al-Madani, 1982.
63. Taysir Al-Allam by Abdullah Al Bassam: Dar al-Maiman, 2005.
64. Jamiʿ Al-Usul fi Ahadith Al-Rasul - Ibn Al-Athir: Dar Al-Kutub Al-Ilmiyyah, 2009.
65. Jamiʿ al-Fiqh: (The Complete Encyclopedia of the Works of Imam ibn Qayyim al-Jawziyya): Yusri al-Sayyid Muhammad: Dar al-Wafa, 1st ed., 2000.
66. Hashiyat Al-Bujayrimi ʿala al-khatib: Dar Al-Kutub Al-Ilmiyyah, 2015.

67. Hashiyat Ibn Qayyim ‘ala Sunan abi Daud: Al-Maktaba Al-Salafiya, 2nd ed., 1968.
68. Hashiyat Al-Ramli ala’ Asna al-Mataleb: Al-Madba’a al-Maymaniyah, 1313 AH.
69. Hashiyat al-Dasuqi: Dar Ihya' Al-Kutub Al-Arabiyya, 1993.
70. Hashiyat Al-Adawi: Madba’ah Al-Madani, 1st ed., 1989.
71. Al-Hawi Al-Kabir by Al-Mawardi: Dar Al-Kutub Al-Ilmiyyah, 1st ed., 1994.
72. Al-Khidmat al-Istithmariyah fi al-Masarif by Dr. Yusuf Al-Shubaili: Dar Ibn Al-Jawzi, 2005.
73. Khasa’is Haq al-Intifa’ (Bahth) by Dr. Muhammad Ali Al-Qari: 2007.
74. Durar al-Hukkam fi Sharh Majallat al-Ahkam: Dar ‘Alam Al-Kutub, 2003.
75. Al-Durr al-Mukhtar by al-Haskafi: Dar Al-Kutub Al-Ilmiyyah, 1st ed., 2002.
76. Al-Durar Al-Saniyah fi Al-Ajwibat Al-Najdiyyah – Group of Authors: 6th ed., 1996.
77. Dalil al-Irshadat – Bayt al-Zakāt al-Kuwait: 2015.
78. Dawr al-Siyasah al-Maliyah fi Tahqiq al-Tanmiyah by Dr. Sayid Adiah: 2nd ed.
79. Al-Dhakhira fi Furuʿ al-Malikiyah – Al-Qarafi: Dar Al-Gharb Al-Islami, 1st ed., 1994.
80. Risalat Abi Zayd Al-Qayrawani: AL-Maktabah Al-Thaqafiya.
81. Al-Rawd al-Murbiʿ by Al-Buhuti: Maktabat Al-Riyad Al-Hadithah, Madba’ah Al-Sa’adah, 1977.
82. Rawdat al-Talibin by al-Nawawi: Dar Al-Kutub Al-Ilmiyyah, 1st ed., 1992.
83. Al-Rawdah Al-Nadiyyah by Muhammad Siddiq: Maktabat Al-Kawthar – Dar Al-Arqam, 2nd ed., 1993.
84. Riyad as-Salihin by Al-Nawawi: Mu’assasat Al-Risalah, 2001.
85. Zaad Al-Mustaqniʿ by Ahmad Al-Hijjawi: Madar Al-Wadan, 1425 AH.
86. Zaad al-Maʿad fi Hadyi Khair al-ʿIbad by Ibn al-Qayyim: Mu’assasat Al-Risalah, 3rd ed., 1998.
87. Al-Zahir fi Ghra’ib Alfaz Al-Imam Al-Shafiʿi by Abi Mansoor Al-Azhari: Dar Al-Dala’i, 1994.
88. Zakāt al-Duyun al-Muʿahsirah by Dr. Abdullah bin Issa Al-Aydi: Bank AL-Bilad, Dar Al-Maiman, 1436 AH.
89. Al-Zakāt fi al-Islam by Dr. Saeed bin Ali bin Wahf Al-Qahtani: Maktabat Al-Malik Fahd Al-Wadaniyah, 3rd ed., 2009.
90. Zakāt on End of Service Benefit by Dr. Abdul Sattar Abu Ghuddah: 1415 AH.

91. Subul al-Salam by Al-Sanʿani: Maktabat Al-Maʿarif, 1st ed., 2006.
92. Al-Siraj Al-Wahhaj by Al-Ghamrawi: Dar Al-Jeel, 1987.
93. Silsalat al-Hadith as-Sahiha - Nasir al-Din Albani: Maktabat Al-Maʿarif, 1995.
94. Sunan al-Darimi: Dar Al-Mughni, 1st ed., 2000.
95. Sharh al-Arbaʿin al-Nawawiyah by Sheikh Abdul Karim Al-Khudair: Al-Maktabah Al-Shamila, 2010.
96. Sharh al-Talqin fi al-Fiqh al-Maliki by Al-Maziri: Dar Al-Gharb Al-Islami, 1st ed., 2008.
97. Al-sharh al-kabir - Abu Al-Barakat Ahmad Dardir: Dar Ihya' Al-Kutub Al-Arabiyya, 1993.
98. Al-Sharh al-Kabir by Shams al-Din Abi al-Faraj Ibn Qudamah: Dar Hajr, 1995.
99. Al-Sharh Al-Mumtiʿ by Ibn ʿUthaymīn: Dar Ibn Al-Jawzi, 1st ed., 1422 AH.
100. Sharh Bulugh al-Maram by Sheikh Attia Muhammad Salim: Mawqi' Al-Shabaka Al-Islamiyah: 2010.
101. Sharh Risalat Ibn Abi Zayd al-Qayrawani - Ahmed Zarruq: Dar al-Fikr, 1982.
102. Sharh Zad al-Mustaqniʿ by Muhammad al-Mukhtar al-Shanqeeti: Al-Maktabah Al-Shamila.
103. Sharh Sahih Muslim by Al-Nawawi: Dar Al-Kutub Al-Ilmiyyah, 2017.
104. Sharh Mukhtasar Khalil by Al-Kharashi: Al-Madbaʿah al-Amiriyah, 1317 AH.
105. Sharh Muntaha al-Iradat by Al-Buhuti: Mu'assasat al-Risalah, 1st ed., 2000.
106. Sharikat al-Musahamah by Dr. Saleh bin Zaben Al Marzouqi: Obeikan Li Al-Nashr,2019.
107. Sahih AL-Bukhari: Dar Ibn Kathir, 1st ed., 2002.
108. Sahih al-Jamiʿ al-Saqir wa Ziyadatuh by Muhammad Nasir al-Din Albani: Al-Maktab Al-Islami, 1st ed., 1988.
109. Sahih Sunan Ibn Majah - Albani: Maktabat Al-Ma'arif, 1997.
110. Sahih Sunan Abi Dawud - Albani: Maktabat Al-Maʿarif, 1998.
111. Sahih Sunan Al-Tirmidhi - Albani: Maktabat Al-Ma'arif, 2000.
112. Sahih Sunan Al-Nasa'i - Albani: Maktabat Al-Maʿarif, 1998.
113. Sahih Muslim: Dar Al-Salam, 2nd ed., 2000.
114. Sukūk Al-Ijarah by Dr. Hamed Mira: Dar Al-Maiman, 2008.
115. Dawabit al-Tijarah fi al-Iqtisad al-Islami by Muhammad Najib Hammadi Al-Ju'ani: Dar Al-Kutub Al-Ilmiyyah, 2005.

116. Al-Uddah Sharh al-Umda by Abdul Rahman Al-Maqdisi: Dar Al-Hadith, 2003.
117. Al-Aziz Sharh al-Wajeez by Imam al-Rafiʿi: Dar Al-Kutub Al-Ilmiyyah, 1st ed., 1997.
118. Umdat al-Huffaz fi Tafsir Ashraf Al-Alfaz by Ahmad ibn Yusuf: Dar Al-Kutub Al-Ilmiyyah, 1st ed., 1996.
119. Umdat al-Salik by Ahmad ibn Naqib al-Misri: 1st ed., 1982.
120. Umdat al-Fiqh by Ibn Qudamah: 2003.
121. Umdat al-Qari Sharh Sahih al-Bukhari- Badr Al-Din Al-‘Ayni: Dar Al-Kutub Al-Ilmiyyah, 1st ed., 2001.
122. Awn al-Ma’bud (Sharh Sunan Abi Dawud) by Muhammad Abadi: Bait Al-Afkar Al-Duwaliah, 1st ed., 2003.
123. Ghams Uyun al-Basair by Ahmad al-Hamawi: Dar Al-Kutub Al-Ilmiyyah, 1st ed., 1985.
124. Al-Fa'iq fi Gharib al-Hadith by Mahmud ibn 'Umar al-Zamakhshari: 1971.
125. Fatawa Dar al-Ifta Al-Urdunia: 2013.
126. Fatawa al-Lajnah al-Da’imah Lilbuhuth al-Ilmiyyah: Dar Al-ʿAsimah, 1st ed., 1996.
127. Fatawa al-Mu’amalat al-Maliyah – Khalid Abdi AL-ʿAleem: 2016.
128. Fatawa Sheikh Ahmed Sharif al-Naʿsān: 2008.
129. Fatawa al-Islam al-Yawm: 2010.
130. Fatwas of the General Authority of Islamic Affairs and Endowments in the UAE.
131. Fatawa Shar’iyyah - Idarat al-Ifta – Dubai, UAE.
132. Fatwa Noor Ala Al-Darb by Sheikh ibn Baz: Idarat Majallat al-Buhuth al-Islamiyyah: 1st ed., 2010.
133. Fatawa Hay’at al-Fatwa – Dubai Islamic Bank: Dar Al-Basha’ir.
134. Fath al-Bari by Ibn Hajr al-Asqalani: Maktabat Al-Malik Fahd Al-Wadaniyah, 1st ed., 2001.
135. Fath Thi al-Jalal wa al-Ikram (Sharh Bulugh al-Maram) by Ibn ʿUthaymīn: Al-Maktabah al-Islamiyyah, 1st ed., 2006.
136. Fath al-Qadir (Sharh al-Hidayah) by Ibn al-Humam: Dar Al-Kutub Al-Ilmiyyah, 2003.
137. Al-Fiqh al-Islami wa Adillatuh by Al-Zuhayli: Dar al-Fikr, 2nd ed., 1985.
138. Fiqh al-Mu'amalat - Group of Authors.
139. Fiqh Al-Muamalat Al-Masrifiyah by Dr. Yusuf Al-Shubaili: Al-Maktabah al-Shamila, 2011.

140. Al-Fiqh Al-Manhaji ‘ala al-Madhhab al-Shafi'I – Group of Authors: Dar al-Qalam, 4th ed., 1992.
141. Al-Fiqh Ala Al-Madhahib Al-Arba’a – Al-Jaziri: Dar Al-Kutub Al-Ilmiyyah, 2nd ed., 2002.
142. Al-Fiqh al-Muyassar: Majma’ al-Malik Fahd, 1424 AH.
143. Qararat Al-Nadwa Al-Sabiʿah li Qadaya al-Zakāt – Kuwait: 1997.
144. Qararat Majma’ al-Fiqh al-Islami (International Islamic Fiqh Academy).
145. Qisas Al'anbia' by Sheikh Muhammad Al-Shaʿrawy: Maktabat al-Turath al-Islami, 2006.
146. Qadaya Fiqhiyyah Mu'asarah by Dr. Nazih Hammad: Al-Dar al-Shamiyah, 1st ed., 2001.
147. Al-Qawa'id al-Fiqhiyyah by Ibn Rajab: Dar Al-Kutub Al-Ilmiyyah, 2008.
148. Al-Qawanin Al-Fiqhiyah by Ibn Juzayy: Dar ibn Hazm, 1st ed., 2013.
149. Al-Kafi – Ibn ‘Abd al-Barr: Maktabat Al-Riyad Al-Hadithah, 1st ed., 1978.
150. Al-Kafi by Ibn Qudamah: Dar Al-Kutub Al-Ilmiyyah, 1st ed., 1994.
151. Al-Amwal by Ibn Zanjawayh: Markz Al-Malik Faisal, 1st ed., 1986.
152. Kashaf Al-Qinaʿ by Al-Buhuti: ‘Alam al-Kutub, 1983.
153. Al-Lubab (Sharh Mukhtasar Al-Qudoori) by Abdul Ghani Al-Maydani: Dar Al-Kutub Al-Ilmiyyah, 2016.
154. Lisan al-Arab by Ibn Mandhur: Dar Al-Kutub Al-Ilmiyyah, 2003.
155. Al-Mabsut by al-Sarakhsi: Dar al-Maʿrifah, 1989.
156. Matn Al-Khiraqi: Dar Al-Sahabah li al-Turath, 1st ed., 1993.
157. Majallat AL-Ahkam Al-Adliyyah: Markz al-Kitab, 2019.
158. Majalat al-Buhuth al-'Islamia: 2006.
159. Majalat al-Sharīʿa Wa-Al-Dirasat Al-Islamia - Kuwait: 1998.
160. Majallat Jami’at Mu'tah: 2000.
161. Majallat Majma‘ al-Fiqh al-Islami - Jeddah.
162. Al-Majmuʿ by Al-Nawawi: Maktab al-Irshad, Jeddah.
163. Majmuʿ Fatawa Ibn Taymiyyah: Majma’ al-Malik Fahd, 2004.
164. Majmuʿ Fatawa wa Rasa'il ibn Uthaimeen: Dar al-Thurayya, 1st ed., 2003.
165. Majmu Fatawa wa Maqalat Mutanawwaʿah - Syeikh Abdul Aziz Bin Baz: Dar al-Qasim, 1422 AH.
166. Al-Muharrar by Al-Rafiʿi: Dar Al-Kutub Al-Ilmiyyah, 1st ed., 2005.
167. Al-Muhalla by Ibn Hazm: Dar Al-Kutub Al-Ilmiyyah, 1st ed., 2002.
168. Mukhtasar al-Tahawi: Lajant Ihya al-Maʿarif.
169. Mukhtasar Al-Qudoori: Dar Al-Kutub Al-Ilmiyyah, 1997.
170. Mukhtasar Khalil: Dar al-Fikr, 1981.

171. Madarik At-Tanzil wa Haqaiq At-Ta'wil by Abu Al-Barakat Abdullah bin Ahmad Al-Nasafi: Dar Al-Kalim at-Tayyib, 1st ed., 1998.
172. Al-Muhadhdhab by Al-Shirazi: Madba'at al-Sa'adah, 1324 AH.
173. Masa'il Imam Ahmad and Ishaq ibn Rahawayh: Dar al-Hijrah, 1st ed., 2004.
174. Murshid al-Hiran by Muhammad Qadri Pasha: Al-Madba'ah al-Kubra Al-Amiriyah: 1306 AH, 1891 AD.
175. Musnad of Imam Ahmad: Mu'assasat al-Risalah, 1st ed., 1996.
176. Almushtaqat al-Maliyah by Dr. Samir Abdel Hamid Ridwan: Dar al-Nashr li al-Jami'at, 2005.
177. Al-Masarif al-Iislamiah bayn al-Nazariah wa al-Tatbiq - Abdel-Razzaq Rahim Jedi Al-Hiti: Dar Usama, 1st ed., 1998.
178. Al-Misbah Al-Munir by Al-Fayyumi: Maktabat Lubnān, 1987.
179. Musannaf Ibn Abi Shaybah: Dar Al-Kutub Al-Ilmiyyah, 2017.
180. Musannaf Abd al-Razzaq: Al-Maktab al-Islami, 1972.
181. Mu'alajat Zakāt al-Duyun al-Sharikat (Bahth) by Issam Khalaf Al-Anzi: 2009.
182. Ma'alim al-Sunan (Sharh Sunan Abi Dawud) by Al-Khattabi: Dar Al-Kutub Al-Ilmiyyah, 2009.
183. Al-Mu'amalat al-Maliyah Asalah wa Mu'asarah by Al-Dubyan: Maktabat Al-Malik Fahd, 2nd ed., 1434 AH.
184. Al-Muamalat Al-Maliyah by Dr. Yusuf Al-Shubaili: Al-Maʿhad Al-Islami, 2001.
185. Maʿani al-Quran wa Iʿrabuh by Al-Zajjaj: 'Alam Al-Kutub, 1988.
186. AAOIFI Sharīʿa Standards: 2004.
187. AAOIFI Financial Accounting Standards: 2007.
188. Al-Muʿjam Al-Wasīṭ - Arabic Academy - Cairo: 2011.
189. Mughni al-Muhtaj - Al-Shirbini: Dar Al-Maʿrifa, 1st ed., 1997.
190. Al-Mughni by Ibn Qudamah: Dar 'Alam Al-Kutub, 1997.
191. Mufradat Alfaz al-Quran by Al-Raghib al-Asfahani: Dar Al-Qalam, 2009.
192. Almuqassat bayn Al-duyun Al-naqdia (Bahth) by Dr. Abdullah Al-Dershawi: 2009.
193. Muqaddimah Ibn Khaldun: Dar Al-Arqam, 2016.
194. Al-Muqni' by Ibn Qudamah: 2000.
195. Min al-Tadbiqat al-Muʿasirah li Al-Zakāt by Dr. Salah Al-Sawy: Mishkat Al-Iqtisad Al-Islami, 1430 AH.
196. Al-Muntaqa Sharh Muwatta Malik: Dar Al-Kutub Al-Ilmiyyah, 1st ed., 1999.

197. Al-Manthur fi al-Qawa'id by al-Zarkashi: Dar Al-Kutub Al-Ilmiyyah, 2000.
198. Manh al-Jalil Sharh Mukhtasar Khalil by Illaysh: Dar al-Fikr, 1st ed., 1984.
199. Al-Muhadhdhab fi al-Fiqh by Al-Shirazi: Dar Al-Qalam, 1st ed., 1996.
200. Mawahib al-Jalil fi Sharh Mukhtasar Khalil by al-Hattab: Dar Al-Kutub Al-Ilmiyyah, 1st ed., 1995.
201. Mawsu'ah Ahsan al-Kalam fi al-Fatawa by Attia Saqr: Maktabat Wahbah, 1st ed., 2011.
202. Mawsu'at al-Fiqh al-Islami by Al-Tuwaijri: Bait Al-Afkar Al-Duwaliah, 1st ed., 2009.
203. Al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah: 2nd ed., 1983.
204. Muwatta Imam Malik: Zayed Foundation, 1st ed., 2004.
205. Nayl al-Awtar by Al Showkani: Dar Ibn Al-Jawzi, 1st ed., 1427 AH.
206. Al-Wajeez by Abu Hamid Al-Ghazali: Dar Al-Arqam, 1st ed., 1997.
207. Al-Wadaiʿ al-Masrifiyah by Dr. Ahmed bin Hassan Al-Hasani: Dar Ibn Hazm, 1999.
208. Al-Wadaiʿ al-Masrifiyyah al-Naqdiyah by Dr. Hassan Al-Amin: Dar Al-Sharq, 1st ed., 1983.
209. Al-Wasit by Abu Hamid al-Ghazali: Dar Al-Salam, 1st ed., 1997.
210. Al-Wika' al-Aslam fi Fiqh hadith al-Salam (Bahth) by Sheikh Muhammad Ali Farkous.

Table of Contents

Foreword 5
Introduction 7
1. Preamble 7
2. Purpose and Importance of This Book 9
3. Methodology 10
4. Structure of the Book 13
Chapter One: Debt: Concept and Applications 15
Section One: Al-Tadāyun as a Standard 17
Topic 1: The Concept of Tadāyun 18
Topic 2: How Jurists Used "Debt for Debt" 20
Section Two: Set-Off: General Concepts 24
Topic 1: Opinions on Set-Off 24
Topic 2: Set-Off on the Mizān (Scale) 25
Topic 3: Creditor vs Debtor 28
1. Debts in One's Relationship with Allah 28
2. Debts among People: Financial and Non-financial 29
3. Interbank Clearing: Financial 32
Chapter Two: Muʿāwaḍāt Contracts 35
Section One: Sale 37
Topic 1: Debt Arising from Possession (Qabḍ) 37
Topic 2: Are Goods Acquired by Contract or by Possession? 40
1. The Difference Between a Contract and Possession 41
2. Using Initial Debt-for-Debt 42
3. A Contract May Exist While Possession Is Delayed 43

Topic 3: Selling an Item Before Taking Possession 44
Section Two: Order Contracts (Salam, Istisnāʿ, and Tawrīd) 51
Topic 1: Salam Contract 52
Subtopic 1: Salam vs Sale 53
Subtopic 2: Immediate Salam (Salam Hāl) 55
Subtopic 3: Replacement of the Muslam Fīhi 60
Topic 2: Istisnāʿ Contract 66
Subtopic 1: Opinions on Istisnāʿ Contract 67
Subtopic 2: Istisnāʿ is not a sale 68
Subtopic 3: Ownership of the subject matter 69
Topic 3: Tawrīd (Supply Contract) 71
Subtopic 1: Opinions on Deferment and Initial Debt 72
Subtopic 2: No Initial Debt Before Possession 76
Topic 4: Murābaḥa upon Order 78
Subtopic 1: Sale after Possession 78
Subtopic 2: Opinions on Fulfilling the Promise 79
Subtopic 3: Promise on the Mīzān (Scale) 80
Chapter Three: Hiba (Gifts) 83
Section One: Gift and the Debt It Creates 85
Topic 1: Debt Arising from a Gift (Gift Debt) 86
Subtopic 1: Gift of a Debt to a Debtor 87
Subtopic 2: "The Guarantor Is a Debtor" 88
Subtopic 3: The Dowry as a Gift 90
Subtopic 4: *Daʿ wa Taʿjjal* Involves a Gift 92
Subtopic 5: *Hibat al-Thawāb* and Its Applications 93
Subtopic 6: Counting a Debt as Zakāt Payment 95
Topic 2: Ownership of the Gifted Item 99
Subtopic 1: Opinions on the Ownership of Hiba 99

Subtopic 2: Ownership of Gift vs Ownership of Loan (Qarḍ) 100
Section Two: Revocation of Gift (Hiba) 103
Topic 1: Opinions on Revoking a Gift 103
Topic 2: Revocation of Gift on the Mīzān (Scale) 104
Topic 3: Comparing Hiba to Other Donations 108
1. ʿUmra 109
2. Vows (Nadhr) 110
3. Wills (Waṣiyyah) 112
4. Waqf (Endowment) 113
Topic 4: The Gift in Hand and Its Automatic Reversion 115
1. Gift in the Recipient's Hand 116
2. When Gift Reverts Automatically 117
Section Three: End-of-Service Benefits 120
Topic 1: Juristic Opinions 120
Topic 2: End-of-Service Benefit as a Debt Owed by the Company 121
Chapter Four: The Role of Wakālah in Activating Guarantee and Transfer . 125
Section One: Agency in Guarantees and Transfers 127
Topic 1: Debt Arising from Wakāla (Agency Debt) 127
Topic 2: The Role of Agency in Activating Guarantee 130
Subtopic 1: Opinions: Does the Guarantee Release the Debtor? 131
Subtopic 2: Recourse vs Non-Recourse Guarantee 132
Topic 3: The Role of Agency in Activating Transfers 136
Subtopic 1: Opinions on Transfer 137
Subtopic 2: Debt Is Not Extinguished by Mere Transfer 138
Subtopic 3: Broader Applications of Ḥawāla 140
Section Two: Contemporary Applications of Ḥawāla 143
Topic 1: Bank Transfer 143
1. Opinions on Bank Transfers 143

2. Bank Transfer as a Form of Ḥawāla 144
3. Charging a Fee for a Bank Transfer 147
4. Exchange in Bank Transfers 148
5. Bank Transfers are Guaranteed 149
Topic 2: Transfers Using Cards and Commercial Paper 150
1. Transfers Using Bank Cards 150
2. Transfers Using Checks and Bills of Exchange 151
3. Discounting of commercial papers 153
Section Three: Contemporary Applications of Guarantees (LG as a Model) .. 155
Topic 1: Opinions on Letters of Guarantee 155
Topic 2: LG Involves Agency, Not a Loan 158
Topic 3: Charging a Commission for LGs 161
Chapter Five: Manāfiʿ (Benefits / Usufruct) 165
Section One: The Juristic Reality of Manfaʿah 167
Topic 1: Opinions on Manfaʿah 167
Topic 2: Benefits in Persons and Property 168
1. Manfaʿah vs Māl 169
2. Manfaʿah Provided by Humans (Services) 171
Topic 3: Zakāt and Theft of Manfaʿah 175
1. Theft of Benefits (Manfaʿah) 175
2. Zakāt on Benefits 176
Section Two: Priority Rights 179
Topic 1: Opinions on Abstract Rights 180
Topic 2: Trading and Substitution of Priority Rights 181
1. Priority Subscription Rights 181
2. Bargain, Earnest Money, and Auction 182
3. Things Bought as a Means 183
Section Three: Ijāra (Leasing / Hiring) 184

Topic 1: Opinions on the Nature of Ijāra 184
Topic 2: Ijāra on the Mīzān (Scale) 186
1. Ijāra as an Independent Contract 187
2. Ijāra vs Sale 188
Topic 3: Sublease 190
1. Opinions on Subleasing Before Possession 190
2. The Validity of Sublease 191
3. Subleasing the Property for More 192
4. Who Has the Right to Sublease? 193
Topic 4: Selling a Leased Property 194
1. Opinions on Selling a Rented Property 194
2. The Validity of Selling or Donating a Leased Property 195
Topic 5: Entitlement to Rent 197
1. Does the lessor own the rent by contract? 197
2. Who is entitled to the rent if the leased property is sold? 199
Chapter Six: Mushāraka and Profit Distribution 203
Section One: Sharika (Companies) 205
Topic 1: Opinions on Joint Stock Companies 205
Topic 2: Shares Represent Ownership 207
Topic 3: Company Debts Are Guaranteed 209
Section Two: Sharing in Profits and Output 212
Topic 1: Opinions on Workers' Income 212
Topic 2: The Worker as Partner or Non-Partner 214
Subtopic 1: The Non-Partner Worker 214
Subtopic 2: The Partner Worker 215
Topic 3: Musāqāt, Muzāraʿa, and Muḍāraba 216
1. Muḍāraba, Musāqāt, and Muzāraʿa on the Mīzān 218
2. Sharīʿa Evidences Distinguishing Ijāra and Partnership 218

Topic 4: Generating a Lawful Profit 224
1. Selling What One Does Not Have or Is Unavailable 225
2. Profit from an Unguaranteed Item 227
3. If an Old Defect Is Discovered in the Sold Item 234
4. The Principle of Al-Kharāj bi al-Ḍamān 235
Section Three: Contemporary Applications of Sukūk 238
Topic 1: Sukūk Based on Leased Property 239
Topic 2: Sukūk of Usufruct of Leased Property 241
Chapter Seven: Ribā (Usury) 245
Section One: Usury in Financial Transactions 247
Topic 1: Opinions on Issues Concerning Usury 248
Topic 2: Riba Means Increase or Excess 252
Subtopic 1: Riba from a Mathematical Perspective 254
Subtopic 2: Riba Is Not Limited to Six Categories 257
Topic 3: Correcting Concepts in Some Hadiths 260
Subtopic 1: Riba is in the Nasi'ah 260
Subtopic 2: Gold, Silver, and Other Items 264
Subtopic 3: Thaman and Muthman Applications 267
Subtopic 4: Selling an Animal for Another on Credit 271
Subtopic 5: Borrowing an Animal or an Item 274
Subtopic 6: Food for Food, Like-for-Like 276
Section Two: ʿArāyā: Fresh for Dry Dates 278
Topic 1: Opinions on ʿArāyā 279
Topic 2: On the Right Track with ʿArāyā 281
Subtopic 1: ʿArāyā Is Not an Exception to Riba 281
Subtopic 2: Selling Fruits on the Tree 285
Subtopic 3: Fruits on Trees: Zakāt and Theft 289
Chapter Eight: Zakāt on Debt 293

Section One: The Reality of Zakāt on Debt 295
Topic 1: Opinions on Zakāt on Debt 296
Topic 2: Zakāt Obligatory on the Debtor 299
Topic 3: Consequences of Considering Zakāt Due on the Creditor 304
Topic 4: Fixed Assets and Accounts Receivable 307
1. Fixed Assets 308
2. Accounts Receivable 310
Section Two: Current Accounts 313
Topic 1: Opinions on Current Accounts 313
Topic 2: Reality of Current Accounts 315
Topic 3: Zakāt on Current Accounts 317
References 322
Table of Contents 331

Understanding Islamic Banking Transactions:

A Scientific and Practical Approach

About the Author

Dr. Yusuf Salah Mohamud holds a PhD along with advanced professional qualifications in Islamic economics, accounting, and related fields. He has extensive experience in Islamic banking and finance and has published numerous scholarly articles in this field.

About the Book

This book examines Islamic banking and financial transactions through a contemporary analytical framework, addressing long-standing juristic disagreements with methodological rigor. The study presents a systematic approach to resolving complex financial issues by analyzing transactions through Sharī'a sources, with the support of applied disciplines such as accounting and mathematics.

A central focus of the study is Āyat al-Mudāyanah (Qur'an 2:282), presented as a comprehensive foundation for understanding debt-related transactions and their modern applications. Through this interdisciplinary approach, the book highlights the precision of Sharī'a texts in regulating financial relationships and their capacity to address contemporary economic needs.

Intended Audience

This work will be of value to Islamic financial institutions, legal and regulatory bodies, and scholars concerned with the codification and harmonization of financial transactions. It also offers insights relevant to organizations involved in international commercial regulation and trade law, as well as researchers and practitioners seeking a principled framework for contemporary financial dealings.

9780567857152

MARAYA | مرايا
للطباعة والنشر والتوزيع ذ.م.م
PRINTING PUBLISHING & DISTRIBUTION LLC